Public Utilities

FORTNIGHTLY

October 14, 1943

PUBLIC UTILITY EFFICIENCY AND POSTWAR FULL EMPLOYMENT
Part I.
By Fergus J. McDiarmid

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Industrial Relations and Utility Labor
By Joseph C. McIntosh

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Mr. Rankin's Recent Tilt with Private Power Windmills
By Larston D. Farrar

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Public Utilities Fortnightly

VOLUME XXXII *October 14, 1943* NUMBER 8

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

WE are, to put it mildly, somewhat confused by the conflicting forecasts being made about the state of the postwar world. After reading a number of books, magazines, and Sunday supplements, we have the impression that the world of tomorrow is going to be a cross between a period of famine, depression, unemployment, together with a mixture of helicopter airplanes for every family, and a comfortable button-pushing sort of existence controlled by electronic tubes encased in plastics.

FRANKLY, we are skeptical about both extremes. The pessimist who declares that civilization has been set back a half century by the war and can see nothing but inflation and national bankruptcy with its attendant economic dislocations, strikes, seems to us just as incredible as the optimistic Sunday supplement stories about plastic airplanes and automobiles fantastically shaped and priced and the comfortable prefabricated houses which come apart like a deck of cards for putting away in a week-end suitcase.

ASIDE from a cautious tendency to seek the truth somewhere in the middle of opposite extremes, we think we see certain common-

FERGUS J. MCDIARMID

Utilities have a fairly easy postwar industrial conversion problem.

(SEE PAGE 465)

JOSEPH C. MCINTOSH

Is utility management overlooking a bet in not cultivating labor unions more assiduously?

(SEE PAGE 477)

sense factors already discernible in the postwar outlook. First of all, American industry and British industry surely realize that their very survival will depend upon rapid conversion and production of peace-time commodities not only for the purpose of having something to sell in order to stay in business, but in order to provide jobs as quickly as possible for the demobilized masses of men now in arms.

IT follows from this that the automotive industry, for example, instead of delaying its conversion to peace production so as to perfect those strange new automobile dreams shaped like fried eggs and built of revolutionary materials, will return to models that can be placed in production at the earliest moment. This will mean a return in the immediate postwar period to 1942 models interrupted by war conversion. Probably the same thing will happen in other leading industries, including home construction and consumer items such as numerous gas and electric appliances.

ULTIMATELY, of course, there will be improvement and change in all of these industrial

Reprinted from the HOUSTON PRESS, July 7, 1943.

fields just as there would have been improvement and change if the war had not intervened. In due time we shall get our television sets and FM radio sets, but not the week after nor necessarily the year after the war is over. All of this is bound, of course, to have an impact on the public utilities.

As the leading article in this issue points out, the operating utilities, and to a considerable extent the utility manufacturing industries, are in a better position than any other industrial group to make a rapid transition to peace-time operations and afford immediate employment to the returning soldiers and sailors. If in addition the industrial world at large is not going to be scrambled for an indefinite period of years—if, in short, the butcher, baker, and candlestick maker are going to try to pick up just about where they left off when the battle trumpet sounded, that is going to solve a lot of problems for public utilities who have the responsibility of furnishing the general industrial field with their gas, electric, communications, and transportation services.

IN plain words, we are not likely either to fall back a half century or jump ahead a half century. We shall start out slowly and surely along the established lines and pick up speed further down the track, after we have gotten into the knack of operating a world at peace.

FERGUS J. MCDIARMID, whose 2-part series on the postwar impact on public utilities begins on page 465, is manager of the investment research department of the Lincoln National Life Insurance Company of Fort Wayne, Indiana. He is a graduate of the University of Toronto and a well-known author of articles dealing with business economics.

LARSTON D. FARRAR

One of Representative Rankin's former constituents speaks up.

(SEE PAGE 482)

A NEWCOMER to these pages is the author of the article on utility labor relations (beginning page 477), JOSEPH C. MCINTOSH. Born in Albany, Georgia, in 1906, and educated through his first year of high school in Alabama, MR. MCINTOSH since 1927 has been identified with the electric power industry.

HE became a member of the International Brotherhood of Electrical Workers (AFL) in 1934, and became an international representative of that organization in 1939, assigned to organization work on utility properties with his base in Washington, D. C. He was a trade union fellow at Harvard University in 1942-43, and is presently assigned by IBEW to utility organization work in the Chicago area. He is a member of the Labor-Management Planning Committee on postwar problems of the IBEW.

WELL, Congress has officially reopened its session following the six weeks' summer recess. We say "officially" in a special sense. For us, the reopening of a congressional session is not "official" until the Honorable John E. Rankin of Mississippi has delivered himself of his annual or semiannual speech on comparative electric rates throughout the United States. And so we passed over with proper interest the President's message and the usual flurry of newspaper photographs of the returning lawmakers and waited until we saw for certain that the veteran Mississippi Representative had done his self-appointed duty by the American electric consumer. We were not disappointed. On the second legislative day of the resumed congressional session there appeared Mr. Rankin's usual tabulation of comparative electric rates for every state in the Union and the District of Columbia. It appears in the *Congressional Record* of September 21st.

SINCE we have reviewed similar analyses of Representative Rankin in the past, and since the latest version contains no particular innovation from his usual technique, we decided that a feature article from somebody else on Mr. Rankin might be an interesting variation. Such is the subject matter covered in the contribution from LARSTON D. FARRAR, beginning page 482.

MR. FARRAR was formerly one of Mr. Rankin's constituents in Mississippi but has since come to the nation's capital where he is at this writing an associate editor of *Nation's Business*.

THE next number of this magazine will be out October 28th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What the State Commissioners Are Thinking About

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 1–64, from 50 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

DAVID E. LILIENTHAL
Chairman, Tennessee Valley Authority.

"The pulling together of the separate strands is the essence of TVA."

E. H. CRUMP
Political leader, Shelby county, Tennessee.

"There are three great dates; the birth of Jesus Christ, birth of our republic, and the years of Roosevelt's work since Pearl Harbor for the American people and the whole world."

WILLIAM GREEN
President, American Federation of Labor.

"We don't want to live in a strikeless nation, but in one where men are free to move together and to administer their own organizations free from government intervention and government control."

EDWARD MARTIN
Governor of Pennsylvania.

"Government is trying to crowd itself into partnership with private industry. This will not work. Government ownership is un-American, extravagant, and means quick death for private enterprise."

ERIC A. JOHNSTON
President, U. S. Chamber of Commerce.

"There are honest men in our midst who believe that democratic capitalism is played out, that it has run its course and must give way to a superstate. Whether they know it or not, such people are singing tunes from the score written by Goebbels and other propagandists of the totalitarian way of life."

EDITORIAL STATEMENT
The Hartford Courant.

"The alarm of the Federal Power Commission that there would be a power shortage had its origin either in the desire to give substance to a socialistic policy of government ownership, or from ignorance of the fact that the generating companies already in the field would naturally, if alive to industrial conditions, welcome increased consumption of their commodity and take steps to provide an ample amount."

WILFRED SYKES
President, Inland Steel Company.

"When the President nominated industry as the job-giver in his recent radio promises to future veterans he put us on the spot. If government does not permit us to deliver it can then move in on us with its responsibility for the idle war veterans and war plant workers. When the miners struck and defied the government, instead of occupying the management offices with troops the President should have occupied the union headquarters."

S. B. WILLIAMS
Editor, Electrical World.

"The postwar prosperity of nine out of every ten communities begins with the hopes and ambitions the power company has for its future."

RAYMOND MOLEY
Associate, Newsweek.

"Since a year ago when the voters decided to elect Congressmen who are not stooges for the executive, there has been a persistent effort in the radical press, in New Deal outlets, and in 'smart' speeches to discredit Congress as an institution."

ROBERT TAFT
U. S. Senator from Ohio.

"We are not engaged in any crusade for democracy, or for the Four Freedoms, or the preservation of the British Empire. We seek a world in which the American people can work out the destiny of the republic, and solve the problems of human liberty and happiness."

W. C. MULLENDORE
Executive vice president, Southern California Edison Company, Ltd.

"It is not only misleading but very dangerous for business leadership to be telling the American public, by inference if not directly, that regardless of the kind of government we have after the war, we will have rapidly expanding markets for new products—the plastics, chemicals, new metals and alloys, the new airplanes, and other improved transports, new electrical appliances. Unless the strangling hand of bureaucratic government is removed from the economic machinery of America, these optimistic plans cannot be realized."

EDITORIAL STATEMENT
The Wall Street Journal.

"A great deal of planning for the postwar years, the transition period, is being done by private citizens and the corporations they own. Industry's planning made a late start, trailing that of a dozen or more political or semipolitical bodies, some of which entertain ideas of planning that are fairly appalling in their scope and the magnificence of the public funds expenditure they imply. It is not too much to say that private and political planners have now entered a competitive struggle to determine which group shall shape the future society of the United States."

FREDERICK C. CRAWFORD
President, National Association of Manufacturers.

"The thing that industry can assert is confidence in its ability, within humanly reasonable time, to create new jobs for the American people in the future as it has done in the past. The heart of the matter is this: We need a reaffirmation, a rebirth of faith in the system of free enterprise. The greatest drawback to prosperity in the postwar era is the uncertainty of government's real attitude toward private enterprise. What we need is a clear affirmation, free from weasel words and mental reservations, of full faith and confidence in our free economic system as the only secure foundation of a free political system."

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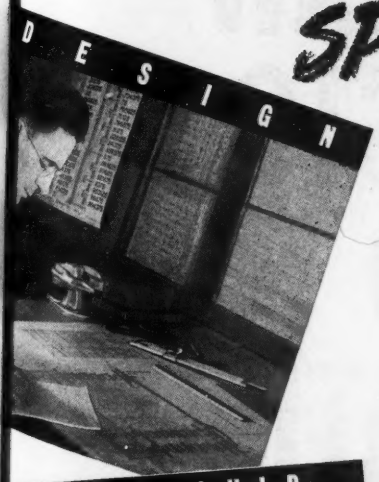

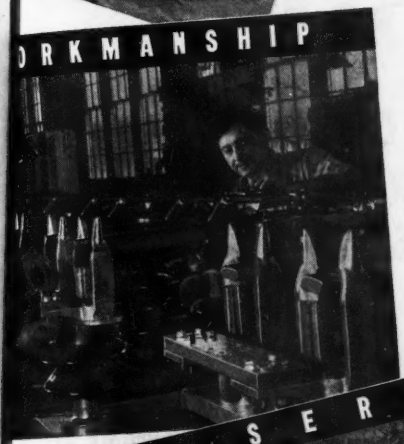

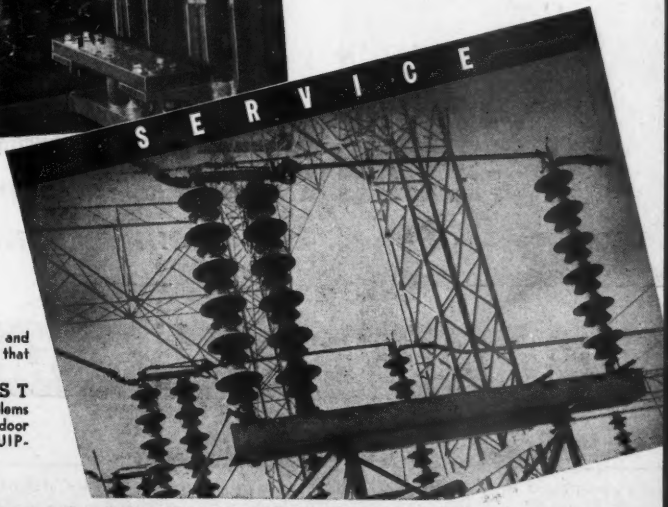

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SUBSTATIONS

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OPEN OR ENCLOSE ISOLATED PHASE HEAVY DUTY BUS

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KIRK INTERLOC SYSTEMS

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AUTOMATIC SECTIONALIZIN EQUIPMENT

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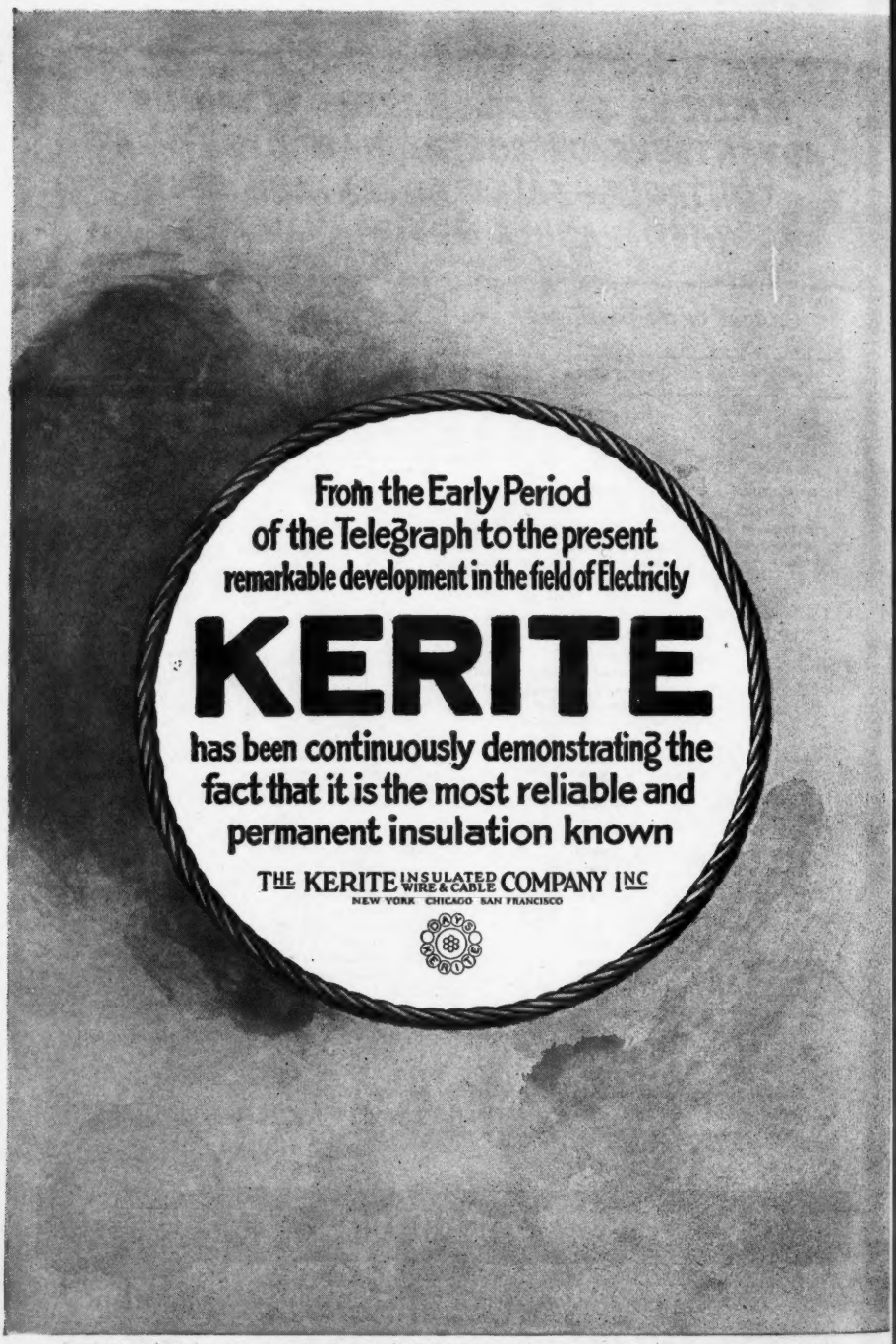

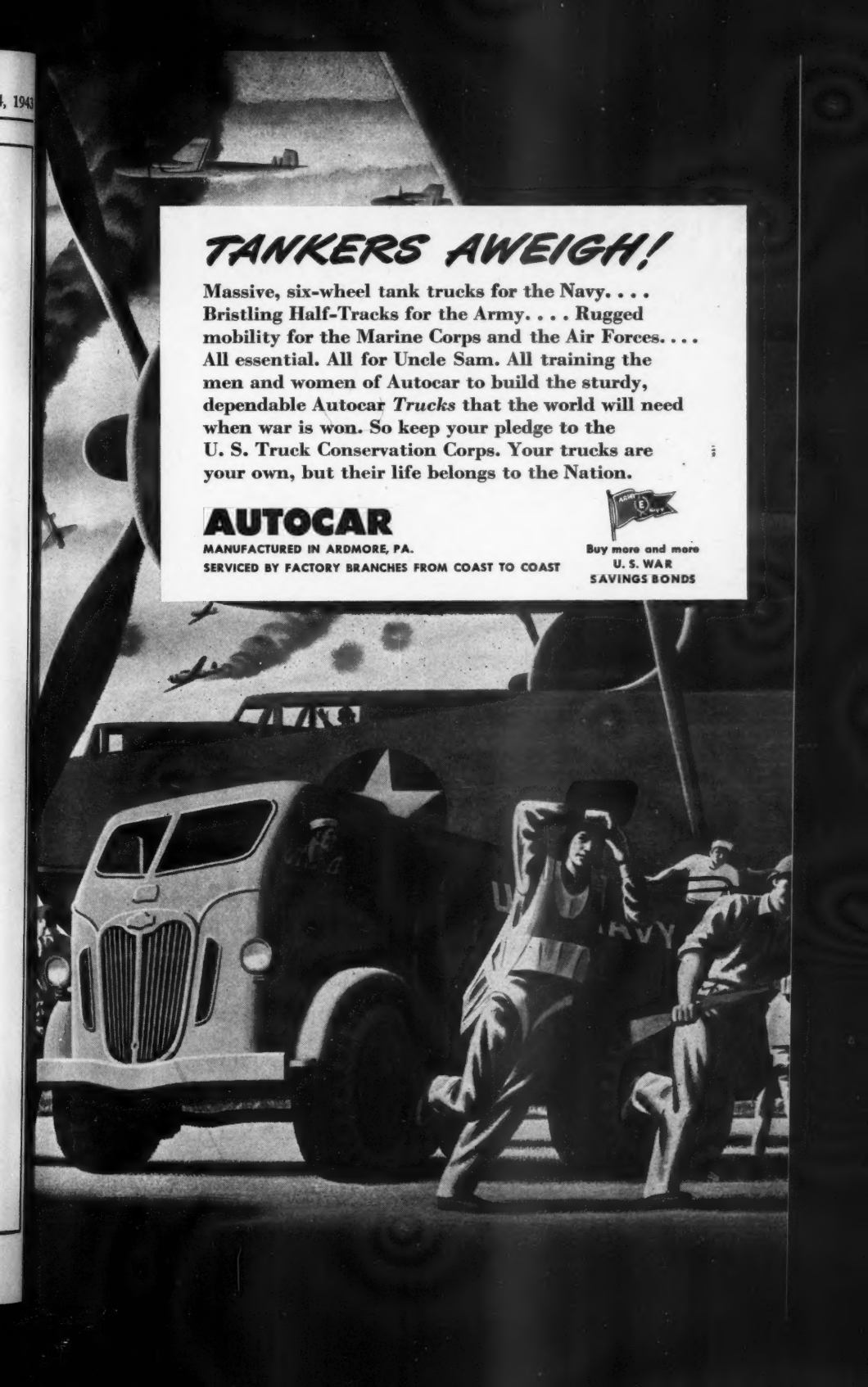
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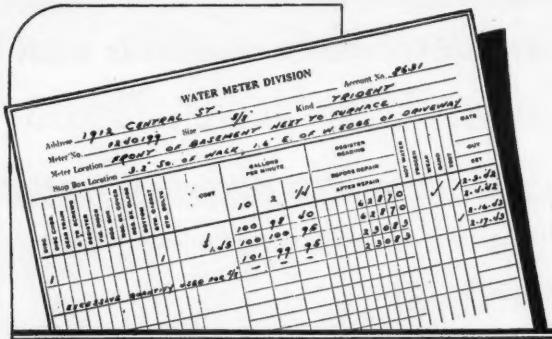
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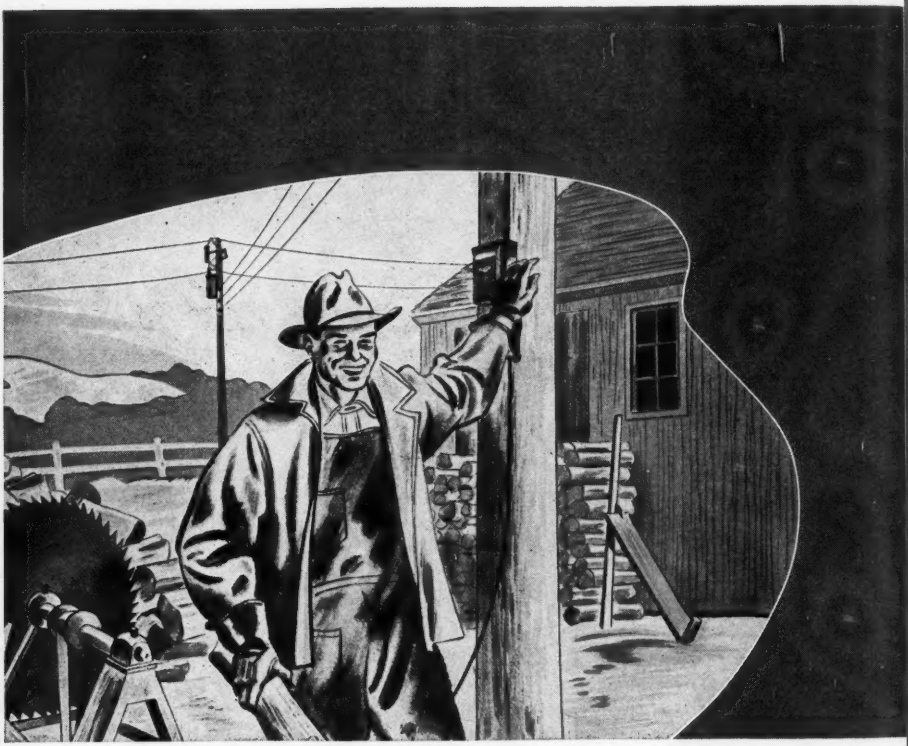

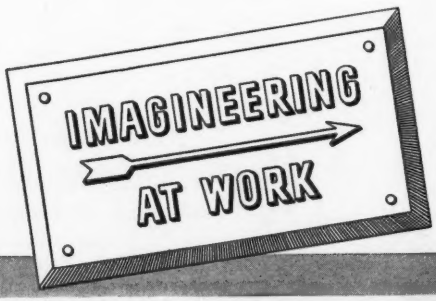

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Utilities Almanack

Due to war-time travel restriction, conventions listed are subject to cancellation.

OCTOBER

14	Th	¶ *U. S. Independent Telephone Association opens meeting, Chicago, Ill., 1943.* ¶ *Pennsylvania Electric Association starts committee meeting, Philadelphia, Pa., 1943.*
15	F	¶ *American Water Works Association, Missouri Valley Section, convenes for session, Des Moines, Iowa, 1943.*
16	Sa	¶ *Electrochemical Society concludes fall meeting, New York, N. Y., 1943.*
17	S	¶ *Pacific Coast Electrical Association, Southern Section, will hold war-time technical conference, Los Angeles, Cal., Oct. 28, 1943.*
18	M	¶ *National Metal Congress convenes, Chicago, Ill., 1943.*
19	Tu	¶ *American Water Works Association, Wisconsin Section, starts convention, Milwaukee, Wis., 1943.*
20	W	¶ *Pacific Coast Electrical Association, Northern Section, will hold meeting, San Francisco, Cal., Nov. 4, 1943.*
21	Th	¶ *South Dakota Telephone Association starts meeting, Mitchell, S. D., 1943.*
22	F	¶ *Virginia Independent Telephone Association will hold meeting, Roanoke, Va., Nov. 4, 5, 1943.*
23	Sa	¶ *Engineers Council for Professional Development holds meeting, New York, N. Y., 1943.*
24	S	¶ *American Public Works Association starts Public Works Congress, Chicago, Ill., 1943.*
25	M	¶ *National Electrical Manufacturers Association starts meeting, New York, N. Y., 1943.* ¶ *Asso. of Gas Appliance and Equipment Manufacturers meets, St. Louis, Mo., 1943.*
26	Tu	¶ *American Gas Association starts meeting, St. Louis, Mo., 1943.*
27	W	¶ *American Water Works Association, California Section, convenes for session, Los Angeles, Cal., 1943.*

A mural by Ezra Winter, reproduced by courtesy of Bank of the Manhattan Company

In this painting is shown the famous Buttonwood Tree on Wall Street, under which was the first New York Stock Exchange—about 1792. A meeting is in progress in this scene.

Public Utilities

FORTNIGHTLY

VOL. XXXII; No. 8 OCTOBER 14, 1943

Public Utility Efficiency and Postwar Full Employment

PART I

Discussion of the three types of utilities now in operation in America, comparison of their methods of financing, and differences in respect to tax burdens.

BY FERGUS J. McDIARMID

IN the years following the present war, the free enterprise system of private capitalism which has prevailed up to the present in America will receive its most severe testing. Unless a reasonably high level of employment can be maintained in the postwar period this system is unlikely to survive. For the attainment of such full employment, a large, steady, and unimpeded flow of savings into investment is necessary. In this matter the utilities, which are as a group among the largest users of capital, have a leading part to play. Not only the building of a new generator, but the purchase by a customer of a new refrigerator or gas or electric range is a step toward this end.

But while full employment from a sociological point of view is probably an end in itself, from the point of view of economics it is only a means to the end of a higher standard of living. The Egyptians, when they were building the pyramids, may have achieved close to full employment, but their standard of living was probably de-

pressed thereby. To work toward a higher living standard, not only the wise and productive investment of capital, but the efficient future operation of the plant so created is required.

In those parts of the world where the free enterprise system of private capitalism has prevailed, three main types of public utility organization have received practical application to date. All three types are now in operation in America. First there is the well-known private company still the dominant form of utility organization in this country. Then there is the municipally owned system serving a single city and sometimes immediately surrounding territory. Examples of this in the electric field are to be found in Los Angeles, Tacoma, Seattle, Springfield, Illinois, Fort Wayne, Indiana, and more recently in San Antonio, Texas. Finally there is the regional public authority serving a wide territory. Examples of the latter are the Tennessee Valley Authority, the Bonneville Authority, and the Hydro Electric Power Commission of Ontario. It is a common practice for such regional authorities to sell power to municipally owned systems. On rarer occasions we find an operating tie between private companies and other types of public utility organizations. This latter type of development has been greatly stimulated by the war.

UNTIL the year 1933, the so-called private company tended quite completely to dominate the electric utility field in this country. In that year only 6 per cent of the generating capacity in central electric stations was publicly owned. By the end of 1942, however, this proportion had increased to 17 per cent, about half of which was municipally owned and half owned by public authorities. While the amount of privately owned generating capacity was increasing by 21 per cent, that owned by public bodies was multiplying fourfold. Of the capacity expected to be added in this year 1943, nearly half will be publicly owned.

In this article and a succeeding one I would like to discuss the basic differences between these three types of public utility organization and to try and bring out the relative advantages and disadvantages of each. How do their financing methods differ? Does any of the three types enjoy any artificial advantages or suffer from any unfair disadvantages as compared with the other types? What are the forces tending to promote efficiency or inefficiency in each case? Finally, which type is likely to help most to create the reasonably full employment toward which we must aim if the so-called free enterprise is to survive and prevail after the war? These are the matters which I would like to discuss.

BEFORE proceeding, however, into a detailed discussion of these basic points there are two or three subsidiary matters of a more or less ideological nature which I would like to clarify. In the first place, I do not believe that as a practical matter it is possible to prove in all cases that any direct relationship exists in either the United States or Canada between public ownership of utilities and so-called political and economic radicalism. The oldest large-scale regional electric system on this continent is that operated by the Hydro Electric Power Commission of Ontario. Yet, in the writer's opinion at

least, the rank and file of the people of that province are in political and economic matters among the most conservative to be found in either Canada or the United States. Ontario's credit stands highest among the Canadian provinces and its major cities are run with businesslike efficiency.

Here in Fort Wayne, Indiana, we have one of the largest municipally owned electric plants in the Middle West. Fort Wayne is a city of diversified industry and the vast majority of its people are employed in private enterprise of one kind and another. There is every reason to believe that its people as a group are believers in the private enterprise system. The town has received over a long period of years quite efficient and economical city government, and its bonds, when they trade at all, do so on a fantastically rich basis. Yet, any politician who was to suggest that Fort Wayne's municipally owned electric plant, which incidentally is debt free, should be sold to private interests, would, in the opinion of the writer, be requesting political extinction. This plant is treated as the darling of both political parties when they are in power, and each party in turn seeks to take credit for its accomplishments.

It would no doubt require something approaching a political earthquake to permit the large federally constructed hydroelectric developments such as Bonneville, Grand Coulee, and the TVA plants to pass into private hands.

Such evidence as is available tends to indicate that public opinion in Fort Wayne is rather typical of that in cities or territories where public operation and ownership of utilities has prevailed over a period of time. There is no appreciable sentiment for a change to so-called private ownership. The writer does not seek to justify or criticize this public state of mind. He merely states it as a rather important fact to be faced. Barring a revolutionary shift in public attitudes, which at the present time is not foreseeable, private utilities in this country are going to have to continue to operate alongside publicly owned utilities and be subject to whatever comparisons either favorable or otherwise that this involves. For this reason it seems not only fair, and also important from the standpoint of survival of the private companies, that the different types of utility organizations operate under roughly comparable conditions, that one type is not offered large-scale advantages which another does not possess. But much more on that subject later.

The other side of the coin is that publicly owned utilities are not as

¶ "Until *the year 1933, the so-called private company tended quite completely to dominate the electric utility field in this country. In that year only 6 per cent of the generating capacity in central electric stations was publicly owned. By the end of 1942, however, this proportion had increased to 17 per cent, about half of which was municipally owned and half owned by public authorities.*"

a class endowed with a larger amount of virtue than privately owned ones. A well-managed privately owned company does not necessarily conduct business on a lower moral plane than its publicly owned counterpart. Of course, there are those who would have us believe otherwise. They would have us believe that there is necessarily something sinister and against the public interest in the operating of a utility property by a private business organization. They tend to be a little weak on facts and figures when it comes to explaining the reasons for their views.

These gentry can be most easily spotted by their liberal use of the term "power trust," an expression now so lacking in meaning that repeated use in this day and age indicates a certain vacuity and simplicity of mind. Such advocates, however, seek to impart to their work a moral grandeur at least on a par with that of the missionary who sets out to convert the heathen. Usually, however, it will be found that they have axes to grind, and manage to derive from their agitation an income measurably greater than they could hope to derive from work more closely associated with the production of real wealth.

Another item upon which I would like to comment at this stage concerns a matter of definition. Just how private is a so-called private utility? Far from being a closely held private monopoly it normally draws on a broad cross section of the saving public for its capital requirements. Securities issued to finance publicly owned utilities have an unusually strong appeal to the wealthy to whom their tax-exempt feature is an important advantage. They are, therefore, in all probability not so broadly owned by the rank and file as those of private utilities. The private utility is subject to close regulation by various governmental commissions and authorities. As a matter of fact, its affairs are as a rule subject to much closer public scrutiny than those of many so-called publicly owned utilities. Therefore, while we will continue to use the term "private utility" in this article we do so with apologies, for the expression describes the situation rather poorly.

FINALLY, a public utility, whether publicly or privately owned, is not necessarily a complete monopoly. A water utility probably comes pretty close to being one, in that the people of a community are forced to use its services. Likewise there is no practical substitute for telephone service, although loss of telephone subscribers during the late depression gives one something to think about before handing out definitions. However, only a fraction of the business of an electric utility is truly monopolistic. Its industrial business is largely competitive—an industry can install its own power plant and frequently does. A large part of the domestic and commercial business is also competitive. For cooking, water heating, refrigeration, and air conditioning, electricity must compete with gas, and where natural gas is available and sold by another company the competition is frequently fierce. The gas utility business is almost entirely competitive and has few of the aspects of a monopoly. These are factors which should be taken into account in regulatory policy to a greater extent than has been the case in the past.

The gist of the preceding several

Method for Raising Capital

"A SO-CALLED *private utility can raise capital, aside from depreciation funds and surplus earnings, by one method only, by borrowing the savings of investors. To do this it must present a convincing case that it will be able to stand on its own feet as an economic enterprise, and that the new capital being introduced will serve a fruitful purpose. Such a situation tends to insure the efficient and economical use of savings."*

paragraphs is a plea that the different types of utility organizations be judged on their real merits or demerits and not on the basis of characteristics imputed to them by promoters of various ideologies.

Financing Methods

IN the last analysis there is only one source of capital, the savings of individual people. When our people as a whole in a given period consume less wealth than they are instrumental in creating a volume of savings has been achieved and capital has been created. Governments in themselves cannot create capital, they can only acquire capital which is created by their citizens. And we are now learning, if we did not know it before, that there are limits to the amount of capital which even the people of this country are capable of saving. If our standard of living is not to suffer, these savings must be used to the best possible advantage.

It is equally if not more important that there be no impediments to the free flow of savings into productive enterprise. When this flow is held up by barriers of one kind or another so that capital tends to gather in idle pools, we have stagnation of business and unemployment. This is what happened during the last decade and it can hardly be tolerated in future if our present economic system is to survive.

Let us now apply these two financial criteria to the three types of utility organizations dealt with above. Which type or types are best organized to assure the economical use of capital? Which is best setup to insure the continuous inflow of capital?

A so-called private utility can raise capital, aside from depreciation funds and surplus earnings, by one method only, by borrowing the savings of investors. To do this it must present a convincing case that it will be able to stand on its own feet as an economic

enterprise, and that the new capital being introduced will serve a fruitful purpose. Such a situation tends to insure the efficient and economical use of savings.

It is not inferred, of course, that private enterprise has never been guilty of wasting capital. Certain duplication of railroad facilities, for example, points to the contrary. Fortunately, such unfruitful use of the people's savings on the part of the public utility industry has been rare. Also the private enterprise system imposes certain checks on the wasteful use of capital which have no counterpart in the sphere of public investment or spending. First, as we pointed out in the preceding paragraph, there is the test of the capital market. In the private enterprise field the chronic waster of capital does not usually stay long in business. Also the requirement that a return be earned on an investment makes for the most efficient use of available capital.

In the case of so-called publicly owned utilities what safeguards exist against the wasteful use of capital? When such an enterprise is financed entirely through the sale of revenue bonds the tests imposed by the capital market apply to some extent, although usually on a less stringent basis than in the case of a private utility. Then there is the natural desire of most managements to do a good job, an influence which should not be underrated.

In the case of municipal systems, particularly those operating in medium-sized cities, the city council, board of works, and citizens generally tend to keep a watchful and critical eye on major capital expenditures.

It is when Federal government finance enters the picture, and the money seems to come from a long distance away, that the danger is greatest of the bars being let down. There is a natural tendency for each community or region to try to get its share of the gravy regardless of the real economic worth of the project on which the money is being spent. Also the means at the disposal of the Federal government to get control of the national savings are very great, just as the restraints on the wasteful use of those savings are correspondingly weak. It can tax, or borrow, or make a capital levy through the process of inflation. There exists a school of thought in Federal government circles which advocates the financing of a great public works program through an indefinite increase in the public debt. This to the writer would seem to lead only to inflation. And such a program would doubtless include public utility construction, to which few if any of the usual safeguards against the wastage of capital would apply.

Turn now to another phase of this matter of financing. What type of financial structure is most suited to insure a free flow of new capital into a utility enterprise? We need hardly consider the federally financed utilities as their ability to obtain capital is limited only by the power of the Federal government to tax, to borrow legitimately, or to inflate. The sale of bonds to the commercial banking system is one of the more refined methods of inflation.

It seems to the writer that utility finance through the medium of serial bonds, as practiced by most municipally owned utilities, is a very good

method of insuring a free flow of new capital into the industry. Under such a setup there is a constant tendency to decrease the ratio of property to debt since debt is normally retired more rapidly than property. Of course such utilities are under the necessity of entering the capital market more often than would be the case if they did not pay off debt, but this may be a good thing, as it encourages them to keep their financial houses in order. Such periodic debt retirement makes room for the incurrence of more debt, when it is desired to raise more capital.

This method of financing finds great favor with the present body of investors. Observe the fact that quite often serial debentures of a private utility sell on a lower interest basis than the long-term mortgage bonds to which they are nominally junior. Such term bonds running for a long period of years, with more often than not only a nominal provision for amortization or none at all, seem to have been an unfortunate inheritance from the field of railroad finance. In the writer's opinion, they are a weak feature of present day private utility finance.

They are desirable neither from the point of view of the borrower nor the lender. They do not provide the lender with the safeguards against industrial obsolescence, decline in earnings from competitive and other factors, etc., which he might expect in view of present low interest rates. If maturity of a large-term issue occurs in time of crisis they threaten the borrower with insolvency. And most serious of all they tend on occasion to block the flow of new capital into an industry.

A CONSIDERABLE number of years ago a middle western utility sold some long-term bonds. At that time its property consisted of an electric system, a streetcar system, and some interurban lines. The interurban lines have now ceased to exist, and the streetcar system is on the point of being replaced with trolley busses which will cost much less than the old streetcars and tracks. The bonds are still outstanding in their original amount. As a result this utility is faced with a situation where it has bonds outstanding about equal in amount to what seems to be the value of its present used and useful property. Its bonds, which are 5's, sell at a heavy discount even in today's bond market. Under such circumstances, this utility could hardly raise new capital through the sale of more bonds. Its equity securities are of such a marginal nature that it could not sell more of them on any worth-while basis. The flow of capital into this company by the usual methods of financing is, therefore, largely blocked.

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¶ "IN *our economy as it exists today, fixed interest securities where the credit risk seems small have a very much better market than stocks. This is no doubt partly because large financial institutions, which are hungry for bonds, are largely prohibited by law and other factors from buying stocks. Also bond interest is a charge before income taxes, and stock dividends come after.*"

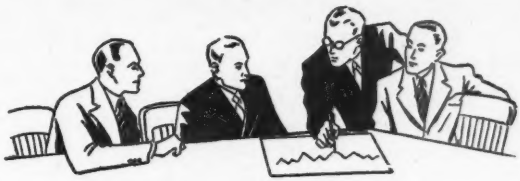
Of course the crowning historical example of the evils resulting from permanent or near permanent debt is found in the field of railroad finance. Much railroad mileage which before the war, at least, had largely lost its earning power and seemed due for abandonment was financed by long-term bonds which still remain outstanding. Such bonds constitute a dead weight burden on the more profitable railroad mileage. There can be little doubt that the burden of fixed charges on old debts has sometimes prevented the railroads from spending money on modernization which was badly needed to maintain their competitive position and also to give employment. In 1932 and 1933, for example, when the bread lines were very long, indeed, the amount of new railroad equipment purchased was insignificant compared to normal. In fairness, of course, it should be stated that a large section of railroad troubles does not stem from their methods of financing.

A NUMBER of years ago a large dam was being thrown across a northern river. At a critical stage in the construction, when the last section of a cofferdam was about to be slipped into place to throw the water away from one side of the river bed, someone upstream got his signals mixed and allowed a large number of logs to come down suddenly, jambing up the breach. Then for a week a thousand or so men had to sit around idle until the log jamb was untangled and work was able to proceed on the dam. I have pointed out above some of the financial log jambs, in the form of unbalanced capital structures with an overload of fixed charges, which may result from issuing debt securities for long terms without appreciable provision for amortization. These too may produce idle men by blocking the flow of new capital into enterprise, or forcing the curtailment of other expenditures to meet fixed charges on old debt. If the free enterprise system is to survive in the future they are a type of luxury we must try to avoid.

As the writer has pointed out previously in the FORTNIGHTLY, publicly owned utilities have in this day and age one noteworthy advantage over private utilities in the matter of financing. It is due to the fact that the former can meet all of their capital requirements through the issuance of debt securities, nearly always on a serial basis, while private utilities must have a large part of their capital structure in the form of equity securities.

IN our economy as its exists today, fixed interest securities where the credit risk seems small have a very much better market than stocks. This is no doubt partly because large financial institutions, which are hungry for bonds, are generally prohibited by law and other factors from buying stocks. Also bond interest is a charge before income taxes and stock dividends come after.

As to how this situation might be equalized for the benefit of the private utilities, the writer has no very clear-cut ideas. Presumably these utilities must have equity securities so somebody can "own" them. No doubt a large part of the answer lies in the field of taxation, on which more later. A partial answer might be to allow private utilities to have considerably more than half their total capital struc-



Taxes of Publicly Owned Utilities

"THE amount of taxes paid by publicly owned utilities does not constitute a very important part of total revenue. Some of these pay an amount supposed to be the equivalent of local taxes. Others render certain services free, such as street lighting, in lieu of such taxes. Without exception, however, they are free from the major part of the tax burden under which all sections of private business and industry carry on; namely, Federal income and excess profits taxes."

ture represented by debt at any one time provided that this debt is put on a serial basis. It will do them no harm if they are able to work toward a lowering in their stated capitalization. They must look forward to the time when many publicly owned utilities will have their debt paid down to small proportions and have correspondingly low fixed charges. It will be better if at that time comparisons are not too invidious.

The Matter of Taxation

THE greatest and most striking difference in the conditions under which so-called privately owned and publicly owned utilities operate revolves around the matter of taxation. The private company operates within the framework of the profits system which, as was previously pointed out, involves no stigma at all, in fact quite the reverse. It simply means that it must stand on its own feet without aid from public funds, taking in as many dollars as it pays out, with the latter including a return on the investment large enough to attract additional capital.

In addition it acts as an important tax collection agency for various government bodies.

Nine large private electric utilities selected at random by the writer paid in 1942 a total tax bill averaging 24.0 per cent of operating revenue; ranging from 28.0 per cent to 18.6 per cent of revenue in individual cases. This compared with an average of 17.8 per cent of revenue paid to their security holders, 7.2 per cent in interest, and 10.6 per cent in dividends.

OF the total average tax bill of these 9 utilities averaging 24.0 per cent of revenue, 9.4 per cent represented local taxes, while 14.6 per cent was income and excess profits taxes. It will be noted that the local taxes are a charge on revenues before any payments to security holders, while the Federal taxes,

equal to 14.6 per cent of revenue, had to be paid before it was possible to pay dividends equal to 10.6 per cent of operating revenue to stockholders. Altogether it will be noted 41.8 per cent of operating revenue was paid out either in taxes or as investment return, payment of the former being the senior charge.

As compared with the private utility company, the publicly owned utility operates with the aid of two important pipe lines out of the Federal Treasury. The first of these has to do with direct taxation. The amount of taxes paid by publicly owned utilities does not constitute a very important part of total revenue. Some of these pay an amount supposed to be the equivalent of local taxes. Others render certain services free, such as street lighting, in lieu of such taxes. Without exception, however, they are free from the major part of the tax burden under which all sections of private business and industry carry on; namely, Federal income and excess profits taxes.

In 1942, six of the largest municipally owned electric systems spent on taxes or tax equivalent an average of 8.1 per cent of operating gross, while bond interest consumed on the average another 8.7 per cent of gross. This bond interest, of course, represented the entire return on invested capital. These results are shown in direct comparison with those of the nine private utilities referred to above, in the table below.

It will be observed that the private companies paid out 2½ times as large a proportion of gross in taxes and investment return as did the municipal systems. The extra burden in these two expense items borne by the private companies was equal to 25 per cent of gross, a very large and important percentage, which seems to render any direct comparison between the rates charged by the two groups of utilities entirely unappropriate.

Do the above percentages indicate that the private companies have been paying a too lavish rate of return to their security holders? They do not. In the first place, they have taken advantage of current low interest rates to refinance their bonds at very low rates. More important still, any direct comparison between total investment return paid by publicly owned and privately owned utilities is largely meaningless. This is on account of the second pipe line out of the Federal Treasury referred to above which operates to the benefit of the publicly owned systems. It concerns the tax-exempt status of the securities through which they are financed.

The importance of this factor has increased steadily as tax rates have mounted.

Its present very great significance may not be generally realized.

	1942 Taxes As % of Operating Revenue			*1942 Investment Return Paid As % of Operating Revenue*		
	Max.	*Min.*	*Average*	*Max.*	*Min.*	*Average*
9 Private Companies	28.0%	18.6%	24.0%	22.7%	12.9%	17.8%
6 Municipal Systems	10.3	5.0	8.1	18.6	3.1	8.7

¶ *"It is quite obvious . . . that publicly owned utilities are now in a position to finance on a considerably more favorable basis than the Federal government and at an interest rate only about one-half to one-third as high as the over-all rate which private utilities must pay on their securities. This advantage to a considerable extent derives from the indirect subsidy paid to such publicly owned utilities in the form of tax exemption of their bonds."*

THE writer has in recent months carried out the liquidation of several million dollars worth of municipal bonds, many of which were sold to finance utility enterprises. The basis on which it was possible to sell these bonds was quite enlightening. Many of them sold on a yield basis very considerably lower than that of taxable United States government bonds. For example, the sewer revenue bonds of a small Iowa city sold to yield 1.3 per cent, while US bonds of the same maturity were selling on a 1.9 per cent basis. Water revenue bonds of a medium-sized Arkansas city sold on a 1.6 per cent basis considerably less than equivalent Federal bonds. The electric revenue bonds of a city in Virginia sold to yield 3.10 per cent less than equivalent maturities of the national government. Just a short time ago the Los Angeles Department of Power sold bonds due in the 70's to yield 2.10 per cent. Shorter United States government bonds were sold shortly before to yield 2.50 per cent.

It is quite obvious, therefore, that publicly owned utilities are now in a position to finance on a considerably more favorable basis than the Federal government and at an interest rate only about one-half to one-third as high as the over-all rate which private utilities must pay on their securities. This advantage to a considerable extent derives from the indirect subsidy paid to such publicly owned utilities in the form of tax exemption of their bonds.

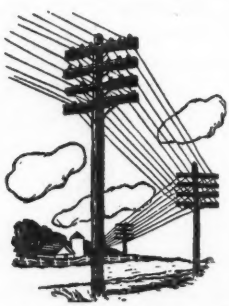
THE statistical data which have been presented above, if they are representative, would seem to indicate that publicly owned utilities have an advantage over private companies on the score of taxation and investment return which is roughly equivalent to a quarter of the gross revenue of the latter. This advantage arises largely from two types of subsidies, which accrue to the publicly owned systems from the Federal Treasury; namely, freedom from taxation of earnings and of interest on their bonds. Obviously, therefore, they operate in an economic and financial climate which is far different from that of the private companies. The comparative advantages which they enjoy are so great that direct comparisons in rate structures are largely without meaning. The wonder in fact is that some private utilities are able to make the showing they do on a comparative basis.

In the writer's opinion, it is extremely important from the point of view of both the future financial integrity and political democracy of the

country that as large a part of our economy as possible operate within the confines of the profits system. By that I mean that it stand on its own feet financially without the aid of pipe lines into the Federal Treasury, taking in at least as many dollars as it pays out. The more segments of our economy which become, in a financial sense, simply branch offices of the Federal Treasury, the greater will be the centralization of economic and, therefore, of political control. The curbs upon inefficiency and waste which the profits system imposes will tend to be increasingly withdrawn and our standard of living will suffer. Such a trend also tends to threaten the over-all fiscal soundness of the central government, to say nothing of political democracy in the country. As matters now stand our private utilities operate fully under the profits system. Can the same be said of the publicly owned utilities?

As long as they continue to draw the tax benefits which they do, I think that this can hardly be maintained.

To Be Concluded in THE NEXT ISSUE



Status of REA Co-ops As Public Utilities

"IT *is my opinion that under the Constitution they* [*co-ops*] *can be regulated; that it would not be violation of due process of law.*

"Whether or not they are regulated depends on the interpretation of the statute. It has been my opinion that under the usual type of regulatory statute defining a public utility as one serving the public, these coöperatives are not utilities.

"I argued a case before the Utah Supreme Court, which agreed with my view. The Washington Supreme Court similarly agreed with my view. The commissions of a good many states have held that they are not subject to their regulation unless expressly placed under regulation by statute.

"There are a few states where by express legislative enactment regulation of these coöperatives has been provided. There are a considerable number of other states where by express statute they have been made exempt from regulation."

—V. D. NICHOLSON,
Deputy Administrator,
Rural Electrification Administration.

Industrial Relations and Utility Labor

Collective bargaining, declares the author, is the only answer to the problem.

By JOSEPH C. McINTOSH

It is an old American custom to "view with alarm," and the writer appreciates the fact that everyone indulges in the custom from time to time. It is evident, however, that this custom has been overworked in connection with the labor relations problem in the electric light and power industry. Writers only remotely connected with the industry have seen fit to recommend various panaceas for the industrial relations "problem" and one begins to wonder if the opinions expressed are indeed an index to the trend of thought of management representatives. Friends of the industry are hopeful that management will awaken to the need of an enlightened approach to the question of unionization of the employees and that such approach will pave the way for coöperation and collaboration to the extent that management and labor can stand united in the difficulties that are sure to follow the present era.

The fact that the industry has not realistically approached the problem is indicated by three recent articles in the PUBLIC UTILITIES FORTNIGHTLY.[1] It may be just coincidental that each of the articles suggests that governmental regulation of labor relations in the industry is desirable while on other pages of the same issues writers decry regulation in other areas and raise the cry against public ownership. Utility managers, like others, can't expect to have their cake and eat it too, and it seems paradoxical that representatives of the

[1] Millard Milburn Rice, "Should Employees of Utilities Be Allowed to Strike?" Vol. XXXI, No. 7, p. 399, April 1, 1943; Silas Bent, "Collective Bargaining in Public Utility Service," Vol. XXXI, No. 9, p. 531, April 29, 1943; Herbert Corey, "The Gentle Art of Cooling Off," Vol. XXXI, No. 10, p. 610, May 13, 1943.

industry could expect to put an end to their industrial relations problem by relying on governmental regulation.

In another article in PUBLIC UTILITIES FORTNIGHTLY[2] one writer wisely suggests that the germ of the failure of all private ownership lies in the industrial relations record. He fails, however, to follow up his observation with any sound plan for correcting the past failures. It may be that part of the present-day ills of the industry are due to the fact that management representatives sometimes fail to think things through. Much consideration should be given to the industrial relations problem before going "all out" for governmental regulation through the medium of additional agencies.

THE rank and file employees of the industry are fully capable of appreciating all the implications of enlightened public service and the greater majority of them do so. This is equally true of their representatives of the International Brotherhood of Electrical Workers and where the Brotherhood has been accepted as a part of the industry, the question of stoppages of work on account of industrial disputes has been entirely removed through the medium of written agreements implemented by real collaboration in all matters.

The skeptic may review the record and the first fact that he will discover is that lost time due to industrial disputes in the industry must be measured "since Pearl Street station," the birth of the industry, as the members of the International Brotherhood of Electrical Workers have not lost one single hour "since Pearl Harbor" as the result of an industrial dispute. He may also like to look to the agreements in the industry for indication as to how the employees, through their bargaining representative, the International Brotherhood of Electrical Workers, have solved certain important issues. Thirty-seven of the agreements, picked at random and currently operating in 34 separate states, gave the writer the results outlined on page 479.

ALLOWING the record to speak for itself—it is evident that the parties can, when the desire is present, negotiate agreements that preclude any stoppage of work and can do this without the assistance of any outside agency. In the electric light and power industry, the Brotherhood entered into agreements with provision for arbitration of disputes as early as the year 1917. And in the construction industry, the Brotherhood, jointly with the National Electrical Contractors Association, established the Council on Industrial Relations in the year 1920, with one of its policies being continuing agreements and arbitration of disputes.

Yes, "viewing with alarm" is an old American custom and another is to "point with pride." The greater portion of the industry where collective bargaining has been established can join with the Brotherhood in "pointing with pride" to the record and leave others to suggest that the industry is not capable of handling its own industrial relations problem. The die-hards should remember the words of the writer who suggested that the germ of failure of all private ownership lies in the industrial relations record.

[2] Alfred M. Cooper, "Coöperation between Utility Management and Labor," Vol. XXXI, No. 1, p. 15, Jan. 7, 1943.

NUMBER OF AGREEMENTS REVIEWED	37
NUMBER SUBMITTED TO WAR LABOR BOARD IN DISPUTE	0
General	
Agreement covers members of—	
one local union	27
more than one local union	10
General statement of purpose included	35
Union security provided	32
Term of agreement—	
one year	28
more than one year	9
Grievance clause	36
Arbitration clause	35
Strikes and lockouts prohibited during life of the agreement	33
Grievance Procedure	
Provision for arbitration	34
Initial step in grievance procedure—	
employee and supervisor	13
union representative and supervisor	13
optional	10
Number of steps prior to arbitration—	
one step	6
two steps	6
three steps	10
more than three steps	12
Time limits imposed on procedures	10
Participation of International Union representative required previous to arbitration	18
Arbitration Procedure	
Arbitration required—	
as final step in grievance procedure	34
in disputes over new agreement or amendment	10
in disputes over observation or interpretation	35
in special types of disputes	11
Arbitration board—	
set up only in the event of a dispute	35
equal number with odd member to be selected if dispute cannot be settled	17
odd number, with equal number of representatives of each party and impartial member to be selected by them	18
Decisions final and binding	35

WILLIAM GREEN, in speaking to representatives of the industry in 1927, said: "Both employers and employees have been free from the domination of autocratic control and governmental dictation such as prevails in some of the other lands. This condition creates a feeling of security and assurance and encourages private initiative and enterprise . . . Industrial freedom is as essential to human happiness and human welfare as political freedom. Let us hope that our nation will always remain free from governmental, autocratic, and dictatorial control of its industries and workers . . . Employees must be accorded the privilege of exercising their rights, as guaranteed free, independent American citizens . . . It is my opinion that coöperation, understanding, and a spirit of mutual interest can be exemplified in the electric power industry to as great or even greater degree than any other industry . . . Many problems of public character arise which seriously affect the economic interests of all concerned and the social interests of the great mass of working people. I sincerely hope that the wage earners and the employers and the management associated with the electric light and power industry will establish a happy reciprocal relationship based upon a recognition of their common interest and common welfare."[3]

SUCH a relationship has been established on the properties of many individual companies but the industry as a whole is continuing to overlook the possibilities inherent in such an arrangement and unfortunately it seems that those people who have settled their major industrial relations problem leave others to do the talking. It should not require a great deal of managerial acumen to lead to the realization that the industry is overlooking a good bet in the interest of its own security in failing to explore all possible ways of coöperating and collaborating with organized labor.

In addition to agreements with privately owned electric light and power companies, the Brotherhood has a large number of agreements with publicly owned utilities and, although the writer is not attempting to speak for the Brotherhood in this article, he can state without fear of contradiction that the Brotherhood seeks to represent its membership in employment with the type of ownership that is most cognizant of the needs of the workers. Members of the Brotherhood are not convinced that public ownership is the answer. Some members of the Brotherhood are firmly convinced that governmental regulation of industrial relations is one step further toward public ownership.

THE preamble to one of the typical agreements included in the above table reads:

"The employer and the employee have a common and sympathetic interest in the utility industry. Therefore, a proper working system and harmonious relations are necessary to improve the relationship between the employer, employee, and the public.

"Close contact and a mutually sympathetic interest between employer and employee will tend to develop a better working system which will constantly stimulate production while improving

[3] *NELA Bulletin*, Vol. XIV, No. 7, July, 1927, pp. 438-440.

the relationship between employer, employee, and the public.

"Progress in industry demands a mutuality of confidence between the employer and the employee. Therefore, each shall benefit by continuous peace and by adjusting any differences that may arise by rational commonsense methods.

"Strikes and lockouts are detrimental to the interest of the employer, employee, and the public; therefore, every effort should be made to coöperate with each other to avoid them.

"The public interest is conserved, hazard of life and property is reduced, and standards of work are improved by fixing an adequate minimum in knowledge and experience as a requirement to the right of an individual to engage in the utility industry.

"The company and the Brotherhood have been in contractual relationship since December 31, 1937. Both parties recognize the mutual benefits of an improved and satisfactory relationship between them, and are desirous of continuing and improving this relationship."

I SUBMIT that the representatives of management on the properties of the company where the above agreement is in operation are not in accord with the idea of the need of governmental regulation of industrial relations and I also submit the thought that they are not much concerned with the trend toward public ownership, at least inasmuch as their own company is concerned.

Collective bargaining in the true sense is the answer to the industrial relations problem of the industry and the only answer. Certainly it would show weakness of leadership if the industry asked for governmental regulation in this area. It does not seem possible that the men who stand out as leaders in an industry that leads all others in almost every other line of progress would sit idly by and permit their right to fully participate in the shaping of an industrial relations program go by default.

Telephone Scrambles Titles

THE telephone rang at one of the headquarters of the Topeka Army Air Base and a voice told the post exchange operator who answered:

"This is the sergeant major calling Major Sergeant."

"How's that?" asked the operator.

The caller repeated several times. Still the operator didn't get it. Finally the caller broke it down:

"I'm Master Sergeant Southiller, the sergeant major," he said. "I want to talk to your major, Major Sergeant. His name is Sergeant."

The operator got it then but long after the connection was made, the operator was muttering:

"Sergeant major, Major Sergeant. B-r-r-r-."

Mr. Rankin's Recent Tilt with Private Power Windmills

The Mississippi Congressman's conclusion that the Russian experiment shows the advantage of public, rather than private, development of electric energy is not, in the opinion of the author, borne out by the facts.

By LARSTON D. FARRAR

Representative John E. Rankin, a strong congressional foe of Communism, who spends about an equal part of his time speaking against the Bolsheviks in our midst and, conversely, trying to communize the electric utility industry, recently made an interesting speech in Congress. On June 8th Mr. Rankin rode once more through the halls of Congress fighting the windmills of private power. Oddly enough, for one of his views about Communism, he used Russia as an example of what can be done through public ownership of power. He extolled the material accomplishments of Communism, but added: "I am figuring this development only from a practical standpoint, disassociated from their political theories."

This writer, who hails from Mr. Rankin's constituency, will attempt no such distinction. He wishes to praise Russia's magnificent industrial achievements since World War I (or since the Revolution, if you will), *and* to discuss the political theories connected with such development. Mr. Rankin might disassociate the two, but the Russians themselves certainly never have tried to do so.

In the book from which the Congressman gained his information, "Electric Power Development in the U. S. S. R.," a 500-page volume printed in Moscow in 1936 in English under sponsorship of the Academy of Sciences, the Russian authors assert again and again that such a program as they boast about could never be carried out in a "capitalistic" country. They go so far as to contend, in effect, that such a program could never be carried out in a democracy, for this would prevent the State from moving men and women at will, opening or closing plants at will, or depriving citizens of any number of rights normally associated with a democracy.

MR. RANKIN'S RECENT TILT WITH PRIVATE POWER WINDMILLS

MR. RANKIN gave the Congress a résumé of the tremendous material electrification program carried out in Russia since the Revolution. Although hinting that this nation should follow the same course, he did *not* point out that

1. The Russians began electrification of that country at a time when electrical development in "capitalistic" countries was fairly complete. In short, when less than 100,000 Russians were being served with electricity, millions of Americans had the blessings of this marvelous power.

2. The Russian program was carried out under conditions of complete government ownership of all industry. In other words, as Soviet writers themselves say, it is not possible to carry out such a program of electrification unless industries, too, are to be socialized in the process. Mr. Rankin failed to point out this fact to his colleagues, many of whom might assent when he mentions more public ownership of electric companies, but who would rise in amazement if he mentioned government ownership of all industry.

3. The Russian program was carried out forthrightly—without much consideration for individual welfare during the process, as Walter Duranty, Eugene Lyons, and many other on-the-spot reporters, sympathetic to that regime, have written since returning to capitalistic America.

FIRST of all we must bear in mind that "Electric Power Development in the U. S. S. R.," is an approved Soviet publication written by Soviet authors. This fact alone, in an era when dictatorship countries frankly made a political virtue of misrepresentation by christening it with that all-embracing euphemism "propaganda," should render the Soviet conclusions at least suspect to all but the blind devotees of the land of Stalin. Certainly a cautious observer would at least want some outside corroboration before agreeing with such conclusions as the claim that Russia had jumped from a position of eleventh in 1925 to third rank among all nations in electric output—exceeded only by the United States and Germany.

It's just barely possible that the writers have presented some of the objectives of the famous "Goelro Plan" covering ten to fifteen years' development as distinguished from actual production, as of the date the book was issued in 1936. As a matter of fact, *Time* magazine ventured some skeptical comment (accompanied by a picture) upon the occasion of one of Ambassador Joseph E. Davies' visits to one of the great Soviet hydroelectric installations. Comment was to the effect that turbines claimed to be in production were not even in place. There is certainly a discrepancy between the Soviet claim in the 1936 publication of 26,000,000-kilowatt capacity and the mere 5,471,000-kilowatt installed generating capacity allowed for Russia in figures taken from the "1935 Electric Exporters Handbook," issued by the U. S. Bureau of Foreign and Domestic Commerce. It is hardly possible that the Soviets could have increased their capacity almost 500 per cent within a single year. One of these estimates is wrong. We can take our choice. If Mr. Rankin cares to choose Soviet propaganda over the disinterested reports of our own Commerce Department, I will not dispute his right to do so.

ADMITTEDLY, up-to-date figures on electric capacity and production in warring foreign countries are sim-

ply not available. The libraries of the State Department in Washington and of the Federal Power Commission do not produce them. We know, of course, that certain great changes have been taking place. We know that the great Dnieper dam and installations were destroyed by the Russians in their scorched earth policy when they retreated from the Germans on the Dnieper river in 1941. Many other Russian cities, and much of the electrified industrial area of European Russia, have fallen into German hands.

Conversely the Russians have undoubtedly installed new capacity to take care of their magnificent war effort in the hinterlands since the German invasion. Probably the Kremlin itself could not produce on short notice a very reliable figure on what Russian capacity for electric output is today. For that matter, most other belligerent countries with the exception of Great Britain and the United States, and possibly Japan, would have a hard job producing creditable statistics along this line on short notice.

But without quibbling about the validity of the 1936 statistics it probably must be conceded that without the program carried out by the Soviets in the past twenty-five years, it is doubtful if Russia would have been able to withstand the onslaughts of Hitler. This is not to say that Russia's electrification could not have been carried out under free capitalism. As a matter of fact, capitalism as we know it in America has never had a chance to work in Russia. If we say that Russia had "capitalism" before the Communists took over, we would then have to explain how it was that such a great country as Russia, under capitalism, could be such a poor, backward place, while a country such as the United States, under capitalism, is so rich.

RUSSIA in 1918 was a country waiting to be developed by anyone with vision to develop it. That Russians did this and did it well, if one can forget their ruthlessness, may be admitted.

Russia in 1918 was the most backward of any European nation in regard to agricultural, electrical, and industrial development. Ninety-six per cent of the electrical facilities of Russia were owned and operated by German interests. The operation of its power industries was by all standards the crudest in the civilized world. Between 1900 and 1918, less than 15,000 kilowatts of new capacity was installed annually in Russia, which at that time was a country larger than England,

¶ *". . . up-to-date figures on electric capacity and production in warring foreign countries are simply not available. The libraries of the State Department in Washington and of the Federal Power Commission do not produce them. We know, of course, that certain great changes have been taking place. We know that the great Dnieper dam and installations were destroyed by the Russians in their scorched earth policy when they retreated from the Germans on the Dnieper river in 1941."*

France, Germany, and the United States all put together.

The costs per kilowatt and per kilowatt hour were from 16 cents up. One electric station in St. Petersburg was built so that it could use only one kind of coal, which had to be imported from England. Fuel supplies at hand were ignored. A station in Moscow could burn only coal from sources hundreds of miles away.

The Donets basin, Russia's principal industrial center, had hundreds of small mechanical plants, but the entire electrical power of this vast region had less than 50 miles of transmission lines. Steam boiler inspection records of that day show 21,500 boilers, but only 18 per cent were water-tube boilers and the remaining 82 per cent were frail pots.

Decentralization of industry had been carried to the extreme. St. Petersburg, a large city even then, received its power from 105 different generating stations with an aggregate capacity of 193,000 kilowatts and different operating voltages. Efficiency standards were as crude as Chinese treadmills and the government itself did not know its resources, most published surveys being prepared slipshodly and haphazardly.

THE aggregate production of electrical energy in Russia in 1913, a typical pre revolutionary year, totaled less than 2,000,000,000 kilowatt hours, the aggregate capacity being a little more than 1,000,000 kilowatts. The United States in the same year had a capacity of twelve times as much, although being much less than half as large in size. And, as Soviet writers now point out, in point of quality as in quantity, the electric power equipment of pre-World War I Russia was even lower than the power of other comparative nations.

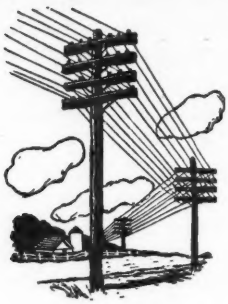
Such was the state of Russian industrial and electric power resources when Lenin took over. One of Lenin's prime policies, as is perhaps well known, was to build up the electrical power facilities of Russia. To that end, in 1920, he founded the Commission for Elaborating the Plan for the Governmental Electrification of Russia—the Goelro—which was headed by G. M. Krzhizhanovsky.

Lenin later wrote: "Unless Russia is placed on a different technical level, higher than before, restoration of the national economy and Communism are out of the question. Communism is the Soviet power plus the electrification of the whole country, for without electrification progress in industry is impossible."

A man who made a statement in America that "without electrification progress in industry is impossible" would have evoked smiles for repeating the obvious. The Russians hailed Lenin as a hero for seeing such a marvelous vision.

THE Goelro plan was projected for a term of ten to fifteen years, and provided that the volume of industrial production should rise from 180 to 200 per cent above the prewar level. Almost needless to point out, it was carried out most successfully, the plan being overfulfilled in the minimum time scheduled for it.

In the First and Second 5-year plans (1928-1932 and 1933-1937) the Goelro principles were further detailed and developed, until in 1936 the Russians (as we have al-



Russia in 1918

"RUSSIA *in 1918 was the most backward of any European nation in regard to agricultural, electrical, and industrial development. Ninety-six per cent of the electrical facilities of Russia were owned and operated by German interests. The operation of its power industries was by all standards the crudest in the civilized world. Between 1900 and 1918, less than 15,000 kilowatts of new capacity was installed annually in Russia . . .*"

ready noted) boasted an increase from 1,000,000 kilowatts' capacity to 26,000,000 kilowatts' capacity in steam plants and hydroelectric developments throughout the nation.

It is not likely that any country in the world will ever show such a miraculous spurt of development in so short a time in industry, farming, and electrical power as did Russia in the period between the Treaty of Brest-Litovsk, when Russia admitted defeat to the Central Powers, and June 22, 1941, when the Germans attacked Russia for the second time in this century. There was swift development in the steel, aluminum, magnesium, and all other industries. There was development in railroads, subways, construction of buildings, and any other economic activity that could be named.

So much for Soviet claims of increased power production through Soviet government planning. It might be observed that Representative Rankin in admiring this progress did not note that much of the original installation was the product of electric manufacturers here in the United States whose names are household words and whose advertisements have for years been familiar in the very pages of the magazine in which these lines appear in print. He did not tell his colleagues that the construction of the vast Dnieper project was supervised by an American engineer, the late Colonel Cooper, and that American technology and research developed by American capitalism really gave Soviet Russia its start along the road towards progress in electrification.

WAIVING that, however, when Representative Rankin attempts to predicate the Soviet progress in electrification upon the fact that it was developed under a system of government operation, he stands upon even more shaky ground. Is it a fact that government ownership has always resulted in the development of greater electric power capacity than private enterprise? What does the record show? Unfortunately, for reasons stated, we do not have very recent figures. The latest available figures are prewar and are taken from the "1934-1935 Electric Exporters Handbook" issued by the U. S. Bureau of Foreign and Domestic Commerce. I have tabulated these figures in the accompanying table of power development.

To repeat, these are old figures, nearly a decade old. But let us assume that the increase in the leading belligerent countries has been at least proportionate to the increase in the United States. That is a very optimistic assumption in view of the fancy bombardment which the United States and Royal Air Forces have been giving so many power installations on the European continent. But for the sake of argument let us assume that the relative picture today is just about the same as it was in 1935. Would it appear from this that government ownership has resulted in runaway development?

FIRST of all, in only three countries, Switzerland, Russia, and the Irish Free State, is power production a government monopoly. In the Scandinavian peninsula the incidence of public ownership is quite high although there is also a substantial margin of private

TABLE OF POWER DEVELOPMENT

Country	*Area—Sq. Miles*	*Population*	*Installed Generating Capacity—Kw.*	*Elec. Gen. Capacity Per Capita*	*Electric Production Kwh. Millions*	*Elec. Prod. Per Capita*
Argentina	1,153,418	12,028,646	1,070,053	89	1,630	135
Australia	2,974,581	6,690,000	688,843	103	2,716	406
Austria	32,369	6,759,062	1,021,000	151	2,380	352
Belgium	11,752	8,213,449	2,400,000	292	4,023	489
Brazil	3,285,319	43,323,660	675,238	16	..	..
Canada	3,694,863	10,376,786	6,112,000	589	21,197	2,043
Chile	286,322	4,287,445	205,316	48	356	84
Denmark	16,570	3,550,651	384,000	108	655	184
France	212,659	41,928,851	10,159,444	242	15,300	365
Germany	186,627	65,143,052	12,880,000	198	31,000	476
Irish Free State	26,601	2,972,802	138,400	46	185	62
Italy	119,844	41,806,000	4,551,000	109	11,884	284
Japan	148,756	64,450,005	5,314,000	82	18,160	282
Netherlands	12,582	8,290,389	1,223,035	148	2,158	260
New Zealand	103,415	1,548,909	315,403	203	858	554
Norway	124,964	2,817,124	1,566,000	556	7,250	2,574
Spain	19,650	28,719,177	1,994,000	69	2,897	101
Soviet Russia	8,144,228	168,000,000	5,471,000	33	20,520	122
Sweden	173,157	6,211,566	1,745,000	281	6,050	974
Switzerland	15,940	4,066,400	1,670,000	411	5,000	1,229
Turkey	294,492	14,000,000	55,000	4	89	6
United Kingdom	94,278	44,790,485	7,200,000	161	20,690	462
United States	3,026,789	122,775,046	36,133,000	294	99,398	809

ownership and operation in Sweden and Denmark. In all of the larger countries, however, with the exception of Germany and (as already stated) Russia, private ownership predominates.

An analysis of electric power production in these various countries lends no particular support to the inference by Representative Rankin that the progress of a nation's electric power supply is in proportion to its degree of public ownership. Admittedly in Switzerland and the Scandinavian countries, which are small and have a local abundance of natural resources, public ownership has done a good job. On the other hand on the basis of per capita figures for Russia and the Irish Free State, public ownership has done a very *unimpressive* job.

Real fact of the matter is, public ownership, as such, is not the controlling factor for any nation's progress in electric power production. There are many other factors which are more important: the availability of natural resources, including fuels, the degree of national wealth, and the general state of commercial activity in the particular country. In Canada, where electric power production, on a per capita basis, is perhaps the highest of any larger country in the world, the two principal provinces, Ontario and Quebec, follow respective policies of public and private power development —showing that both forms of ownership are doing a good job in the Dominion.

WHAT is perhaps most important right now is the contribution of electric power to the war effort. On the side of the United Nations it is noteworthy that the United States, with whose electric industry Representative Rankin finds so much fault, is truly the arsenal of democracy, supplying arms, ammunition, and planes, without which our completely socialized ally, Soviet Russia, would be sorely pressed, indeed. Furthermore, we are making planes and ships so rapidly in this nation of ours, by an industrial machine which is powered to the extent of more than 80 per cent by our privately owned electric energy, that the German Reich cannot keep pace. With each passing month, this margin of productive power is spelling the doom of the Axis. And it might be of interest to Representative Rankin to know, if he does not already know, that the German Reich, the only truly productive Axis nation, depends for her electric power on municipally owned and other publicly owned plants, to the extent of approximately 65 per cent. This is simply a coincidence. But it surely does not lend any support to the idea that public ownership in the power industry means greater development of electric power as compared with private enterprise. In Great Britain, which is the other great armament-producing partner of the United Nations, approximately three-fourths of the electric power supply comes from private industry.

For reasons already stated, we cannot say truly just what great strides Soviet Russia, probably the weakest major productive link in the United Nations family at present, has made or would have made if it had not been for the Nazi invasion.

BUT we can stack up the record of the American power industry according to figures issued by the Office

of War Utilities of the War Production Board, with full confidence that no nation on earth can touch it or come near it, whether or not that nation depends on its private power developments for supply. According to OWU, which recently announced power estimate figures through 1945, the total *increase* in electric power capacity in the United States from the start of the war program through 1944 will exceed 8,000,000 kilowatts. This brings the installed capacity of Class I public utilities in the United States to the astonishing figure of 45,600,000 kilowatts. If we add to that, 10,000,000 kilowatts estimated capacity of industrial plants and smaller utilities in the United States, we have a grand total of 65,600,000 kilowatts. It is estimated that present-day electric power capacity in the United States *constitutes approximately one-third of the generating capacity of the entire world.* Over 80 per cent of it is under the auspices of private ownership and operation. Representative Rankin cannot match that in Russia or anywhere else.

Render unto the Utilities the Coin of the Realm

TELEPHONE companies will doubtless be interested in a bill recently introduced in Congress by Representative Reed of Illinois (HR 2998), making it unlawful to manufacture or use slugs in coin boxes, telephones, vending machines, etc. It is possible that when committee hearings on this bill occur, the committee members will have a chance to see some interesting and ingenious specimens of counterfeit coins collected by the telephone companies in lieu of legal tender.

In addition to slugs cut, stamped, or hammered out of every conceivable material, telephone companies have at various times collected debased foreign coins (the Italian lira formerly worth a cent is about the size and weight of an American nickel), beer tops, buttons, shells, pebbles, pieces of blass and bone, and whatnot. Not all of these counterfeits, of course, have been either reasonable facsimiles or even successful in obtaining a free call. In fact, only a modest percentage of the foreign objects dropped into coin boxes actually work. The rest simply clutter up the mechanism and result in "out of order" signs being placed on the boxes until they can be repaired.

Other utilities, of course, have their troubles with the chiselers who try to steal service. With the electric company it is usually a short-circuit device for jumping meters. With the gas company it is usually a bypassing tube or an attempt to slow down the registering mechanism of the meter through the use of drags, pins, or even acid solutions. One old lady in the Georgetown suburb of Washington, D. C., got the nickname among gas company employees of "Brickbat Annie" because she used to pile a bunch of bricks on top of her gas meter and remove them hastily whenever the meter reader would come around. She was evidently under the impression that the weight of the bricks slowed down the meter, and since it was a relatively harmless practice the gas utility men let her go on thinking so. She has since died and gone to her dubious reward with the conviction that she had swindled the utility out of a considerable sum over a number of years.

The championship for slug passing, however, must go to a New York city resident who operated during the days of the old prepayment gas meter. This industrious petty swindler had some way of freezing ice disks in the shape and size of a quarter and hard enough to trip the contacts of a meter box. The best part of his scheme was the fact that the evidence promptly melted. It was finally discovered by an observant meter collector, who noticed a quantity of rust deposit on the bottom of the coin chamber.

Wire and Wireless Communication

THE Federal Communications Commission, on September 28th, by a 5-to-1 vote, approved the long-debated merger of the Western Union and Postal Telegraph companies—three days before the statutory deadline fixed by Congress.

The FCC said the merged company, which presumably will bear the name of the Western Union Telegraph Company, will be a "natural monopoly" like the telephone, power, and gas companies "where it has been found by experience that one company adequately regulated can . . . render superior service at lower costs than competing companies."

It is planned that Western Union stockholders will get Class A shares of the new company, while Postal Telegraph stockholders will get Class B shares of the new company, convertible after one year to Class A certificates at the rate of 5 to 3. Postal employees will be absorbed with all employment privileges of Western Union employees.

First physical steps will be interconnection of former rival offices in 90 key cities, followed by the elimination of 598 duplicate city branch offices. Recording and delivery operations will be consolidated.

Approval of the consolidation by the New York Public Service Commission is a remaining formality. A dissenting stockholder's suit already filed is not taken seriously.

Representatives of three labor organizations—the Commercial Telegraphers Union (AFL), American Communications Association (CIO), and the Congress of Industrial Organizations—had asked the commission to disapprove the merger or withhold action for at least the duration of the war. They contended that the companies had made no showing that the consolidation would result in improved service to the public.

* * * *

CHAIRMAN James Lawrence Fly of the Federal Communications Commission last month said the radio industry showed too much of a tendency to avoid "vital" public issues in its broadcasts. He said, at his press conference, "There seems to be something of a tendency in the industry generally to restrict and exclude rather than to lay down sound policies that will give us broader and more wholesome public service."

Asked what would happen if the industry followed the tendency he described, Fly said "That would be a matter for the consideration of the commission." He remarked:

> It is something of a defensive complex that enters into this sort of thing, a tendency of the industry to avoid these vital questions on the public issues, to take refuge behind shibboleths rather than move out in a fundamental and vital way and grasp the issues and do something about rendering a public service in regard to them.

Fly asserted in response to another question that "from the standpoint of ideal service it may well be that there ought not be any sponsorship of news or comment. I would take no position on

that. You certainly do have some splendid examples of courage in news reporters and commentators who are paid by the sponsors. And I certainly had not intended to level any criticism at such news reporters and commentators or at those sponsors."

Saying that "a radio license is a public trust," Fly added:

> I heard a so-called news program last night. It always is supposed to be a news program. Through the months it has been tending more and more to get away from the news of the day to the philosophies of the particular sponsor.
>
> Things like that are done in a somewhat subtle if not oversubtle manner. Only by careful listening do you discover that he is not giving you news, but is peddling ideas to you from the company headquarters.
>
> When ideas and ideals and philosophies are promoted, they ought to be promoted openly; and in any case, when they are promoted, they should be counterbalanced by other presentations so that the public will have the benefit of both sides of the controversial issues.

He did not identify the news program.

* * * *

EDWARD J. NOBLE, former Under Secretary of Commerce and prospective buyer of the Blue Network, told the Federal Communications Commission recently he did not favor the selling of radio time to those who sought to "sell" a philosophy rather than goods and services.

Mr. Noble's statement was in reply to a question from FCC Chairman Fly about the sale of radio time to a certain automobile manufacturer, with a commentator on its program, and refusal to give time to a symphony broadcast by a labor organization. Mr. Noble said he would approve the sale of time to the motor company so long as it tried to sell "goods and services," but if it tried to put across any particular philosophy he told Chairman Fly that he would expect the president of the Blue Network, Mark Woods, "to do something about it."

Asked whether he had "an open mind" concerning organizations which have no products to sell, Mr. Noble told the FCC that he did have an open mind and that he intended to have a study made of the use of time by the Blue Network "to see if it is operating in the best interests of the public." Under specific questioning concerning the use of time by labor organizations, church groups, and manufacturing associations and small business organizations, Mr. Noble replied: "I think they should be treated fairly and equitably, regardless of financial strength or political control."

At the outset of the hearing on September 20th, C. Nicholas Priaulx, treasurer and general manager of Station WMCA, owned by Mr. Noble, testified that the proposed purchase price of $8,000,000 for the network was based on a study of profit and loss figures, opinion on the future of radio, and plant equipment at the stations.

LEN DE CAUX, publicity director of the Congress of Industrial Organizations, charged at the hearing before the FCC that organized labor has suffered unfair treatment at the hands of radio stations. Mr. de Caux said both local stations and networks have placed labor at a disadvantage compared with employer and business interests. Labor frequently is denied the right to buy time or obtain free time "while the airwaves are largely monopolized by programs sold to employing and business interests," he said. Complaint, he said, was not directed specifically at the Blue Network, but he held that the FCC should assure labor a larger proportion of free time and guard it against blanket restrictions on its right to buy time.

An attempt by Philip Handelmann, New York attorney, to interrogate Mr. Noble on his fitness to operate the Blue Network was blocked on the same day, at least temporarily, by the Federal Communications Commission. Mr. Noble had been examined closely by Chairman Fly concerning the policies he would adopt as head of the Blue Network. As he was being excused as a witness, Mr. Handelmann asked permission to question him about his purchase in 1940 of radio Station WMCA from Donald Flamm.

Mr. Fly noted that a controversy over the WMCA sale was being aired in New York courts and said the FCC could not "assume authority" to try an issue now pending in a state court.

* * * *

PAUL W. WHITE, director of news broadcasts of the Columbia Broadcasting System, recently said "It would be a very tragic distortion of radio's function" if network managements "should attempt to control democratic public opinion either on a local, regional, or national basis."

Defending Columbia's "long-established policies of letting the radio listener make up his own mind, rather than allowing news broadcasters to make it up for him," he said in an address at a luncheon in New York of radio news analysts that "it is for the same reason we have repeatedly refused to sell time for the presentation of one-sided viewpoints. Were we to do this, we would be selling —and selling out—the great power of broadcasting to the particular groups able to or willing to spend the most money."

White referred to the CBS policy as a recent "subject of controversy." Cecil Brown, Columbia commentator, announced his resignation on September 22nd, declaring he opposed the policy. Brown said White had objected to his August 25th broadcast, in which he said "a good deal of enthusiasm for this war is evaporating into thin air."

White said in his address that "we feel that radio has become a number one force in the creation of public opinion. That is why Columbia regularly sets aside time for discussion of controversial issues."

* * * *

THE Georgia Public Service Commission, investigating intrastate long-distance telephone rates, on September 9th ordered the earmarking for possible refund to telephone users of a fund estimated to equal $600,000 in a year's time.

The order under which the commission has ordered the investigation concerns the higher rate in effect for calls within the state as compared to calls of an equal distance to points outside the state, the commission explained.

In an interim order issued on September 9th, the commission directed the Southern Bell Telephone & Telegraph Company and all independent companies to make records of names, addresses, and tolls of all intrastate calls as of October 10th with the possibility that the difference between the intrastate and the present interstate rates may be refunded.

Chairman Walter R. McDonald said the difference in the rates would be earmarked and placed in a special fund, which he said telephone officials estimated would total more than $600,000 annually.

In issuing the order, McDonald announced that a hearing on a rule *nisi* for the telephone company to show cause why the "unjust discriminations" between the intrastate and interstate toll rates should not be eliminated had been continued until November 15, 1943.

Through counsel, the telephone company had contended that the proposed reduction would be confiscatory and a violation of the Federal Constitution, and had asked as an alternative that the firm be given ten months to prepare its case.

* * * *

ON September 30th, Representative Eugene Cox, Democrat of Georgia, announced to the House of Representatives that he had resigned as chairman of the select 5-man committee investigating the Federal Communications Commission.

Mr. Cox told the House that his action was prompted by the continuous attack upon him, based on alleged charges of irregularity in the use of a fee to obtain $2,500 worth of stock of the Albany (Georgia) Herald Broadcasting Company. Mr. Cox reiterated his declaration that he was innocent of any such irregularity but declared that members of the FCC had sought to distract attention from the merits of the committee's investigation by indulging in personal attack against himself.

He told the House that it was more important that the work of the commit-

tee should go on unhampered by any such distracting influence and that he, himself, should be vindicated. He said he would not continue in any other capacity or association with the committee.

When Representative Cox had finished his 20-minute statement, the House rose and applauded. Majority Leader McCormick commended his courageous action, while Speaker of the House Rayburn took the floor to praise Cox for his conduct under "very difficult circumstances."

* * * *

A U. S. Department of Justice petition for a permanent injunction to restrain the Western Union Telegraph Company from alleged violation of the Sherman antitrust act was dismissed last month by U. S. District Judge Robert R. Nevin in New York city.

The government had charged that the company's exclusive contracts with railroads, hotels, and office buildings, while not necessarily illegal individually, formed collectively an implement in a conspiracy to monopolize the communications industry. Judge Nevin wrote:

> The evidence does not establish that the contracts in question herein, either singly or taken together, constitute any substantial restraint of trade or commerce or substantially affect competition in the communications industry. Nor does the evidence establish on the part of the defendants any conspiracy or combination in restraint of trade or monopolization or attempt to monopolize the communications industry or any part thereof.

* * * *

INVESTIGATION into rates charged in California by the Western Union Telegraph Company was started last month by the California Railroad Commission. This action was in connection with the merger of the Western Union and the Postal Telegraph companies, recently approved by the FCC. (See page 490.)

Testimony on the opening day was from the engineers of the commission and the recommendation was made that the Western Union rates be reduced to a maximum of 48 cents for the first 10 words, with 3½ cents for each additional word. In this connection it was pointed out that under the existing long- and short-haul provisions in effect by the company there are inequalities that penalize certain areas.

For instance, the rate between Hayward and Santa Maria is 60 cents for the first 10 words and 3½ cents for each additional word, while between Richmond and San Diego, a distance twice as great, the rate is 48 cents for the first 10 and 3½ cents each additional.

Another instance was that between Manteca and Bakersfield where the rate is 60 and 3½ cents, while between Sacramento and El Centro, twice the distance, the 48- and 3½-cent rate prevails.

Postal Telegraph now does approximately 20 per cent of the telegraph business in California and its base rate is 20 per cent less than that of the Western Union. Postal's gross annual business is around $115,000.

* * * *

PRESIDENT Roosevelt last month challenged the authority of Congress to remove from government payrolls William E. Dodd, Jr., and Goodwin B. Watson, officials of the FCC, charged in the House with radicalism. In his first message on the reconvening of the legislative branch, the President declared the act of Congress was an "unwarranted encroachment" upon the authority of the executive and judicial branches of the government and was not binding upon them. Congress sought to remove the officials through a "rider" to the urgent deficiency bill which was enacted in July. The legislation specified that the two officials continue only until November 15th unless nominated by the President and confirmed by the Senate for any Federal office.

President Roosevelt reluctantly signed the appropriation bill on July 12th but the next day announced at a press conference that he would send the message to Congress when it reconvened. In his message last month the President said he would have vetoed the bill if the appropriations it contained had not been essential to war activity.

Financial News and Comment

By OWEN ELY

Postwar Taxes—Will Excess Profits Tax Be Repealed?

CONGRESS is now beginning to consider a new tax bill, to apply against 1944 income, and the Treasury Department is issuing its usual preliminary feelers regarding proposed increases designed to reduce the "inflationary gap" in our national income. The Wavs and Means Committee was to begin hearings October 4th, and preliminary reports indicated that members did not see eye to eye with Treasury experts' plans to raise $10,000,000,000.

The alternative proposals said to be under consideration by the Treasury include (1) raising the individual withholding tax from 20 per cent to 30 per cent; (2) increasing social security levies from $1,250,000,000 to $6,000,000,000 a year; and (3) an increase in corporation income tax rates by perhaps 10 percentage points. (Presumably this would mean a 50 per cent normal tax.)

It is hoped that some way can be found to avoid an increase in corporation tax rates, which are already at an extremely high level, considering the fact that the common stockholder is taxed on dividends in his individual return. Previous expressions of opinion have indicated the probability that corporate levies would be "frozen" around present levels. In any event utility companies are already paying more than their fair share of corporate taxes, in the opinion of many observers, and should not be subjected to any additional burden when they have benefited so little by sale of electricity for war production purposes (such sales being at extremely low rates per kilowatt hour in most cases).

IN 1942, according to a compilation prepared by the Edison Electric Institute, the electric utility companies paid $197,000,000 in normal Federal income taxes, $133,000,000 in excess profits taxes, $72,000,000 in miscellaneous Federal taxes, and $226,000,000 in state and local imposts, making a total of $628,000,000. This compared with about $372,000,000 available for common dividends, additions and betterments, and surplus. The amount paid out in common dividends was not compiled, but, based on Federal Power Commission figures for 1941, probably was well under $300,000,000. After allowing for individual taxes, the amount left in the hands of common stockholders probably did not amount to much more than $200,000,000. Thus the amount taken by the Federal government in normal income taxes alone about equals the net amount retained by the common stockholder.

An increase in the normal tax rate (including the surtax) from 40 to 50 per cent would mean increased taxes of nearly $50,000,000 (based on 1942 earnings), or about 25 per cent of the common stockholders' net receipts. This would naturally have a depressing effect upon utility common stock prices. Possibly some method can be found to swing any increase in the corporate tax burden to those industries which are really benefiting substantially by war operations.

The utility companies are presumed to be allowed to earn about 6 per cent on their investment, based on the rulings of courts and commissions in recent years as to what constitutes a "fair rate of return." In 1941 less than this was earned by Class A and B electric utilities (using data compiled by the Federal Power

Commission). Total utility plant was $14,736,792,872 and current assets $1,-217,206,538. The net total, after deducting reserves for depreciation and amortization of utility plant amounting to $2,-096,411,822, was $13,857,587,588. Total utility operating income for the same companies was $769,557,466, indicating a return of about 5.6 per cent on the investment. Making ample allowance for write-offs, the adjusted return should not exceed 6 per cent. While complete figures

	*Excess Profits Tax** (000)*	*Est. Saving if EPT Is Repealed (000)*	*Saving, Amount per Share*	*Earnings per Share* 12 *Mos. Ended*	*Amount Earned*	*Amt. Incl. Tax Saving*
Electric-gas Holding Companies						
American Gas & Elec.	$11,979	$5,990	$1.33	July	$2.26	$3.59
American Power & Lt.	*	.....	.....	.....	.....	.....
American Water Works	*	.....	.....	.....	.....	.....
Columbia G. & E. (1st pfd.)	17,954	8,977	9.20	June	12.99	22.19
Commonwealth & Southern (pfd.)	31,663	15,832	10.70	July	9.33	20.03
Elec. Power & Lt.	*	.....	.....	.....	.....	.....
Engineers Pub. Service	10,135	5,068	2.66	July	1.45	4.11
Federal Lt. & Traction	1,044	522	1.00	June	1.79	2.79
Middle West Corp. (a)	2,870	1,435	.43	June (a)	.59	1.02
National Power & Light	*	.....	.....	.....	.....	.....
Niagara Hudson Power	7,315	3,658	.37	June	.33	.70
North American Co.	9,380	4,690	.55	June	1.72	2.27
Nor. States Power (Del.) Cl. A	4,260	2,130	2.73	June	6.42	9.15
Public Service of N. J.	10,931	5,466	1.00	June	1.26	2.26
Standard Gas & Elec. (pr. pfd.)	4,993	2,496	5.33	June	12.92	18.25
United Gas Improvement	*	.....	.....	.....	.....	.....
United Lt. & Power	*	.....	.....	.....	.....	.....
Electric-gas Operating Companies						
Boston Edison	*	.....	.....	.....	.....	.....
Commonwealth Edison	2,244	1,122	.09	June	1.83	1.92
Connecticut Lt. & Power	1,842	921	.80	August	2.59	3.39
Consolidated Edison of N. Y.	None	.....	.....	June	1.75	1.75
Consolidated Gas of Baltimore	*	.....	.....	.....	.....	.....
Detroit Edison	10,740	5,370	.85	August	1.34	2.19
Indianapolis P. & L.	1,860	930	1.30	June	2.17	3.47
Pacific Gas & Electric	*	.....	.....	.....	.....	.....
Public Service of Indiana	2,727	1,364	1.23	July	1.96	3.19
San Diego Gas & Electric	2,219	1,110	.89	July	.95	1.84
Southern Calif. Edison	*	.....	.....	.....	.....	.....
Gas Companies						
American Lt. & Traction	*	.....	.....	.....	.....	.....
Brooklyn Union Gas	*	.....	.....	.....	.....	.....
El Paso Natural Gas	486	243	.40	July	3.51	3.91
Lone Star Gas	*	.....	.....	.....	.....	.....
Oklahoma Natural Gas	*	.....	.....	.....	.....	.....
Pacific Lighting	*	.....	.....	.....	.....	.....
Peoples Gas Lt. & Coke	5,012	2,506	3.80	June	6.46	10.26
Southern Natural Gas	10	.....	.....	June	1.85	1.85
United Gas Corp. (1st pfd.)	*	.....	.....	.....	.....	.....
Telephone & Telegraph Companies						
American Tel. & Tel.	*	.....	.....	.....	.....	.....
General Telephone Co.	2,418	1,209	1.91	June	2.18	4.09

* Interim report either does not clearly indicate whether an excess profits tax is paid, or combines the tax with the Federal normal income tax.

** Recent financial statement (consolidated system report); whether indicated or not, it is assumed that a 10 per cent postwar credit has been deducted.

(a)—Six months.

are not available, earnings in 1942 were considerably lower than in 1941, while 1943 is showing some improvement. The utilities this year are probably earning around 5¾ per cent on investment, after allowance for write-offs, it is estimated.

Few of the utility companies are earning excess profits in the accepted meaning of the term—abnormal war-time profits. The fact that many of them are paying excess profits taxes seems due largely to the unfortunate fact that in past years they have accrued heavier depreciation reserves in their reports to the Treasury Department than in their reports to stockholders. Some effort should be made to work out a new basis for taxing utilities, or they should be exempted completely from the excess profits tax.

ROSWELL MAGILL, member of the law firm of Cravath, de Gersdorff, Swaine & Wood and former Under Secretary of the Treasury, in a recent talk before the Controllers Institute of America, declared that "corporate tax rates are at a high point in our fiscal history and ought to be reduced as soon as they can be to a much lower level. As a nation we would be better served with a high level of business activity and lower tax rates than with moderate business activity and high rates."

Cancellation of excess profits taxes would, on the basis of 1942 figures, save the electric utility companies about $67,000,000 (one-half of the excess profits taxes paid last year). This is on the assumption that the 10 per cent postwar credit has been deducted in all cases, making the tax rate 81 per cent (90 per cent minus 9 per cent) against that portion of taxable income above the exemption. This figure also corresponds roughly with the maximum over-all tax rate of 80 per cent. It is assumed that with EPT out of the way, the normal and surtax rates would apply against this portion of taxable income, so that with the present 40 per cent rate the tax paid in lieu of excess profits taxes would be about one-half as much. This, of course, is only a convenient rule-of-thumb formula designed for average results, and individual figures might differ widely.

If the combined normal and surtax rate should be raised from 40 to 50 per cent, this would mean that last year's normal income taxes for all electric utilities would increase by one-fourth or about $50,000,000. If excess profits tax were repealed, the saving would then be only about three-eighths instead of one-half. This would add about $17,000,000 to the $50,000,000 increase just mentioned, making a total of $67,000,000. On this basis the advantage gained from repeal of the EPT would be completely offset by the stepping up of the normal and surtax rates—though in individual cases the results might vary considerably.

In the table on page 495, the potential savings from repeal of excess profits tax have been estimated in terms of share earnings, where data are available in interim earnings statements.

An Optimistic Forecast on Holding Company Securities

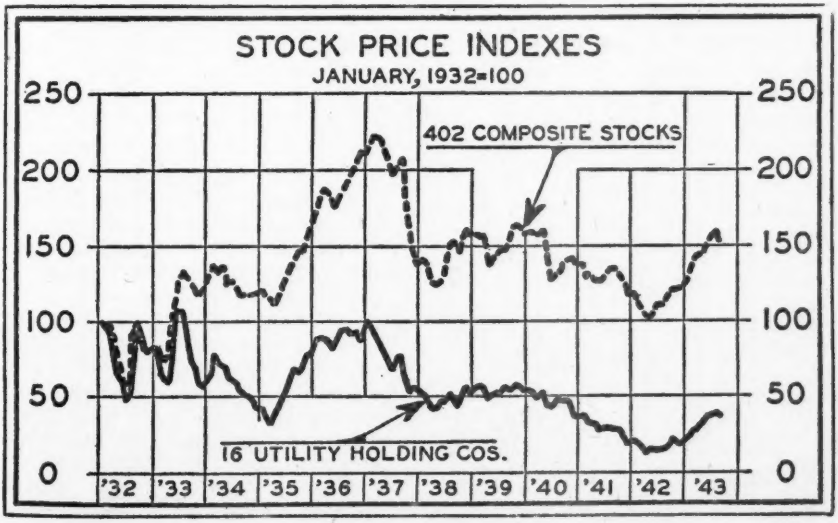
STANDARD & POOR'S in its September 27th issue of *The Outlook* points out that utility holding company securities have declined about 60 per cent since 1932 (although earnings for 1942 were about equal to those of the earlier year), while the composite index of 402 stocks has advanced 50 per cent (see accompanying chart). Standard points out that the "death sentence" meant the end of high-leverage gains anticipated from the growth of the electric power industry, and also raised a threat of the mass sale of properties. The SEC took no steps to allay the fears of investors, and made little effort to refute published reports that its activities would destroy investment values. Furthermore, states the service, its fundamentally "legalistic" approach to the matter of regulation, involving several proposed yardsticks of a drastic nature, added to investors' fears. As a result, investors were reluctant to make commitments in this group, when

there were ample opportunities for investing in other groups which did not have such uncertainties.

However, Standard & Poor's is now optimistic regarding a further recovery in the securities of holding companies, as it feels that investors have less fear of SEC policies and actions than formerly, and that there is greater appreciation of the sharp discounts at which most holding company issues are still selling (as compared with their estimated break-up value). Based on the table published by Standard on August 9th, the average holding company stock was then selling at a discount of about one-third below the estimated liquidating value, while many were at a discount of over 50 per cent. Moreover, the service points out that liquidating values are not static, but rise rapidly with any advance in the general market. The leverage principle, which made these stocks so popular in the 1920's is again at work, although on a different basis. While earnings this year are showing only a modest recovery due to heavy tax payments, the change in the price-earnings ratio resulting from investors' reappraisal of the operating company stocks has an exaggerated effect on the junior securities of the holding companies.

THE service admits that SEC policy remains the basic factor in the situation, but feels that this policy is gradually becoming clarified. Originally it was thought that properties would be "swapped" and systems reconstructed on a territorial basis. Later the idea gained ground that the holding companies might be permitted to "trustee" their holdings, relinquishing voting control but retaining an equity interest. While the SEC is permitting some systems such as Continental Gas & Electric and Southwestern Public Service to build up interconnected systems through the purchase of properties from other systems, this is attributed to the need of more efficient service in the territories served. With this exception, the SEC now favors liquidation of all holding company properties except a single important unit for each system.

However, the SEC has relieved investors' fears on one score—it appears willing to give junior stockholders limited participation in the distribution of assets, on the theory of future earn-



ings recovery. Thus the theory of "going concern" has prevailed over the bankruptcy principle of absolute priority. The SEC has also been more coöperative recently in approving sales of properties and "has clearly recognized the desirability of orderly and opportune liquidation of assets of holding companies, rather than forced sale thereof."

Moreover, the service points out, the SEC has done investors a service by forcing an increase in depreciation allowances, reduction of fixed debts, and cleaning up of property accounts. This in turn has practically ended the movement toward public ownership.

Competitive Bidding

THE SEC has recently published a tabulation of data relating to competitive bids submitted for utility issues sold pursuant to Rule U-50. The table includes a description of the issue and amount, the date when bids were opened, names of bidders and number of firms in their syndicate, the amounts bid including interest cost to the company, the price to the public and the yield, the gross underwriting spread in points and total amount, and the concession to dealers.

The average number of houses in the syndicate has varied widely—from 1 to 138, with the average number around 25. There were 38 issues during the period of twenty-six months, or an average of about 1½ a month. Of these, 2 were common stock offerings, 7 preferred stock issues, and 29 bond issues. In 2 out of the 38 cases, institutions were successful bidders. In 3 cases there were no bidders for the offering, although 2 of these were successfully reoffered at a later date.

Following is a list of underwriting firms which headed bidding groups (including cases where two or more firms headed the group):

	Successful Bids	*Unsuccessful Bids*
First Boston Corp.	12	9
Halsey, Stuart & Co.	8	15
Mellon Securities Corp.	5	5
Kidder, Peabody & Co.	5	3
Glore, Forgan & Co.	4	1
Smith, Barney & Co.	3	7
Kuhn, Loeb & Co.	3	10
Lehman Bros.	3	9
Stone & Webster & Blodget	3	1
Blyth & Co.	2	5
White, Weld & Co.	1	..
Lazard Freres & Co.	1	..
Dean Witter & Co.	1	..
Salomon Bros. & Hutzler	1	9
Bonbright & Co.	1	2
Harriman Ripley & Co.	1	6
Harris, Hall & Co.	1	1
Coffin & Burr	1	1
Drexel & Co.	..	9
Dillon, Read & Co.	..	2
Otis & Co.	..	2
Lee Higginson	..	3
R. W. Pressprich	..	2
Wood, Struthers & Co.	..	1
Central Republic Co.	..	1
A. C. Allyn & Co.	..	1
Morgan Stanley & Co.	..	1
Eastman, Dillon & Co.	..	1

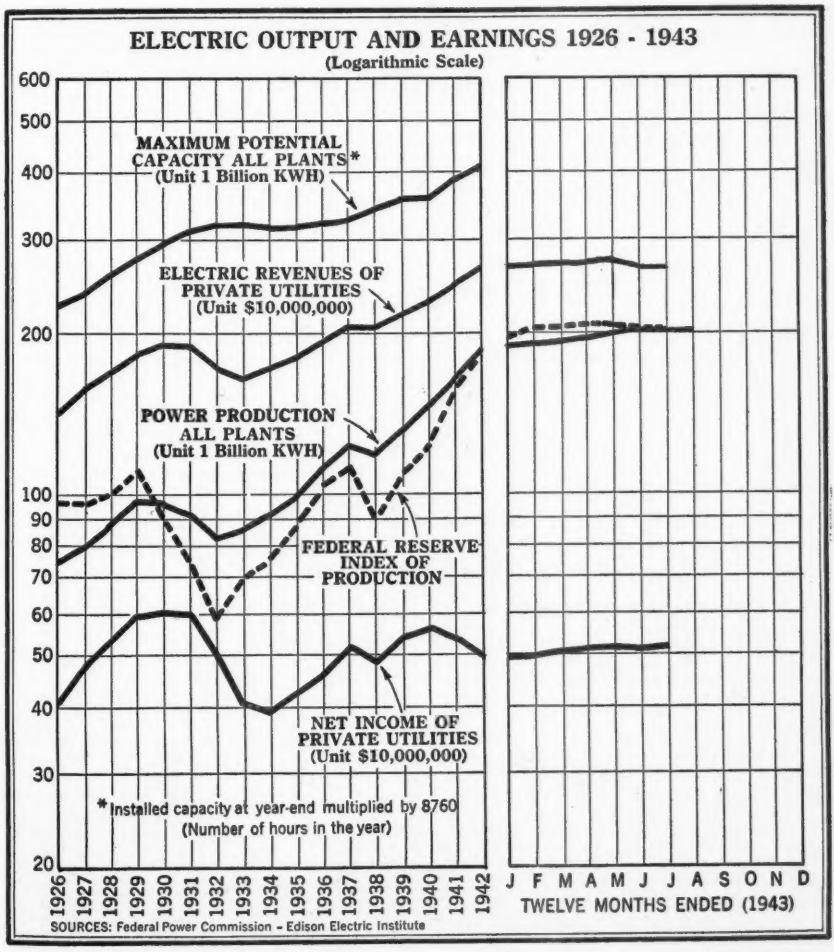
Several conclusions may perhaps be drawn from the above:

(1) The enforcement of Rule U-50 seems to have slowed down utility financing, as indicated by our departmental chart (September 30th issue, page 433). However, the war-time priority given to Federal financing was also a factor, as well as heavy taxation (reducing refunding savings), and in some cases SEC requirements as to write-offs, etc.—so that it is difficult to apportion the blame for the decline in activity. However, the rather cumbersome machinery of the new system, with the heavy duplication of preparatory work, can hardly have failed to slow down the number of "deals."

(2) Some houses that were formerly quite active, such as Morgan Stanley, Dillon, Read, and Bonbright, have taken comparatively little interest in competitive bidding. Other important houses—such as Kuhn, Loeb; Salomon Bros.; Drexel; Harriman Ripley; Lehman; Smith, Barney; and Blyth—have been fairly active in forming groups, but were too conservative in their bidding to obtain much financing. Outstandingly successful bidders have been First Boston; Halsey, Stuart; Mellon; Kidder, Peabody; and Glore, Forgan.

(3) In the preliminary discussions over competitive bidding an important SEC assumption was that it would open the door for local firms to handle financing of utilities in their own territory—the implication being that under the old system New York city was "monopolizing the show." As forecast editorially, this has not been the case. The only successful out-of-town bidder in our list is Harris, Hall & Co. (Mellon has a New York office although its headquarters are in Pittsburgh.)

(4) There have been a few cases where (as forecast) keen competition resulted in the successful bids being too high, making these issues "sour." But the question as to whether the proportion of unsuccessful offerings has been larger under the new system than under the old is difficult to answer without further research.



What the State Commissioners Are Thinking About

Excerpts and digests from the opinions expressed in reports and addresses at the annual convention of the National Association of Railroad and Utilities Commissioners in Chicago, Illinois, from September 14th to September 16th, 1943.

On Federal-state Regulation

"To many it may seem strange that the state which gave birth to successful state regulation of public utilities and their rates should be one of the first and most insistent in opposing further centralization of that power. Believe me, it is not the jealousy of a state or commission trying to protect its power—it is not a reluctance to give up control, although that would be but human and natural, nor is it a tendency to harken back to the 'good old days.'

"Progress in public utility regulation had to come and must continue. But all change is not progress—and there is a right and a wrong path for utility regulation just as there is for individuals. Control, carried too far, becomes bureaucracy and loses its gains in confusion and delays. State control has its weaknesses and its disadvantages—but it has one advantage which alone outweighs all the claims for Federal control.

"That advantage is basic to our republican form of government and is a fundamental part of the democratic ideals upon which our United States of America is founded. I refer to the fact that when government gets out of the hands of the people—our nation will cease to exist—and one of the evidences of government being taken away from the people is the tendency on the part of Washington that state regulation of utilities be hamstrung, overridden, circumscribed, or ignored."

—John D. Biggs,
Chairman, Illinois Commerce Commission.

"During this war year, we have experienced many invasions of state regulation, some of it, in our opinion, unnecessary, but to which we have submitted in the interest of winning the war. Our objective should be to recover as much of our regulatory authority as possible when peace returns."

—Frank W. Matson,
Chairman, Minnesota Railroad and Warehouse Commission.

On OPA-utility Relations

"I am pleased to have had this opportunity to discuss with you the views of our office on some of the more significant problems affecting our relations with the members of the state commissions. Having served for over five years on the Wisconsin commission and actively participated in the affairs of this association, I think I have a fairly good idea of

the way you are thinking. I hope that we may work with you to carry out the national policy in your field. Let me assure you that OPA does not desire to take over one iota of your jurisdiction; nor does it wish to dictate to you how you shall conduct your cases. All it does ask is that it be afforded a fair hearing and that in the exercise of your discretion in determining what is a reasonable rate, you give substantial weight to the national policy of stabilization. If you will do this, we can ask no more; and since the national policy applies in all other fields of price stabilization, we can ask no less."

—Robert A. Nixon,
Director, Transportation and Public Utilities Division, Office of Price Administration.

"The element of inflation inherent in any increase in utility or common carrier rates is only one of the many, many important factors which our state commissions must consider when they are called upon to determine the necessity for such increases. When OPA does intervene in a state case, its real function is to present facts which will afford to our regulatory commissions the *means of determining* the true relative importance of inflation as a factor in present-day rate making. If and when OPA's efforts are directed to that limited yet very useful function, I am convinced that all state commissions will sincerely welcome the intervention of OPA in any proper proceeding. If, however, it attempts to present facts supporting a contention that *any* proposed increase would be unreasonable because such increase is *per se* inflationary—then, in my opinion, such attempt is a disservice to OPA itself, and is of very doubtful help to any regulatory commission.

"As stated in the beginning, OPA should stick to the subject of general inflation—and should not attempt to regulate state utility and common carrier rates."

—W. F. Whitney,
Member, Wisconsin Public Service Commission.

On Utility Duration Earnings

"It would be entirely appropriate to recast our thinking as to what constitutes a fair rate of return. The utility companies should have no cause for complaint if earnings were so reduced as to constitute a constant share of the total purchasing power used for nonwar purposes. Perhaps, under present conditions, a rate of 4 per cent after all expenses including taxes is as high, comparatively and relatively speaking, as would have been a rate of 6 or 7 per cent in the prewar era. . . . The solution of the problem that seems most promising was illustrated by a statement of the Bridgeport Hydraulic Company of Bridgeport, Connecticut, in notifying its stockholders in September, 1942, of a reduction of 25 per cent in the dividend rate: 'To make a long story short, we are in the midst of the worst war in all history, and the company and its stockholders are a part of it.'"

—Clyde Olin Fisher,
Member, Connecticut Public Utilities Commission.

On War Rates of Utilities

"Through the coöperative efforts of the regulatory agencies, the utility industry, and our own agency, there have been relatively few important rate increases in the utility field since the outbreak of the war. This constitutes a substantial contribution to the success of the national stabilization program. Generally, although there have been rises in the cost of labor, fuel, materials, and supplies, the national policy of economic stabilization has minimized these increases so that rising revenues resulting from additional business have surpassed the rising costs, with the result that the greatest incentive to rate increases—that of diminishing net returns—has not yet fully developed. There are exceptions, of course, largely limited to the smaller telephone, heating, and gas utilities where costs have risen more rapidly than revenues. In certain instances, rate increases have been in order and our office has not opposed them.

"Again, I have the impression that a number of utility executives realize that the industry as a whole has a mighty stake in the prevention of inflation.

"Inflation means spiraling costs, and in the case of regulated enterprises it is not possible to raise rates and keep revenues ahead of costs. The experience of the street railway in Cologne during the period following the last war when runaway prices prevailed in Germany is a salutary example. When inflation gripped that city, costs went up so rapidly that the street railway increased its rates twenty-five times in five months, and still could not survive. What will happen to the insurance companies, the trust funds, and widows and orphans who own the securities of public utilities if conditions

occur here such as occurred in Cologne in the early 20's? The vice president of one of the largest utilities in the nation said to me last fall that his company was vitally interested in preventing inflation; that it would ultimately be the loser if unwarranted rises in prices take place; and consequently that it would not seek any increase in rates for the duration if it could see its way clear to come out whole at the end of the war. This is just plain horse sense."

—Robert A. Nixon,
Director, Transportation and Public Utilities Division, Office of Price Administration.

On Aviation Regulation

"Why should not the states and the Federal government have concurrent jurisdiction to impose economic regulation on operators of commercial aircraft? The answer is, in my opinion, that air transportation is essentially a national, an interstate business. American Airlines flies through 23 states, United Airlines 15, TWA 14, and Eastern 18. There is not a single air carrier in the United States which operates in less than three states. Transport airplanes now being used travel on the average over 1,600 miles per day and an individual airplane can span the continent and be halfway back in a single 24-hour period. The average air passenger's trip is about 400 miles, while that of the average rail passenger is 50 miles."

—S. G. Tipton,
Assistant General Counsel, Civil Aeronautics Board.

On SEC-state Regulation

"The SEC . . . has an equally obvious interest in seeing that plans for compliance with § 11 conform to the state commissions' standards with respect to utility operations and security issues. In many cases, speaking technically and strictly, this is not a matter of 'coöperation,' since the transactions submitted for SEC approval cannot be carried out unless authorized by the state commission as well. However, neither the SEC nor state commissions seem disposed to insist upon technical divisions of authority. It is the settled policy of the SEC to seek the aid and coöperation of state commissions, and to give state commissions the same. The absence of statutory requirements of coöperative procedure, which could be met by mere formal compliance, is immaterial.

"There is ample evidence of the ability and willingness of the SEC and state commissions to work together, exchange views, and give proper weight to each other's point of view and jurisdiction. It is vital both to effective state regulation and to a successful administration of the Holding Company Act that such coöperation continue."

—Report *of Committee on Corporate Finance, W. C. Fankhauser of California, chairman.*

On Renegotiation

"A current problem of rate making which should receive brief comment in this report is in connection with the negotiation and renegotiation of contracts for electric power to serve war loads. It is the opinion of your committee that the President's directives in connection with this subject intended to accomplish the following result: to secure the cheapest source of power, in many instances the lessened cost as the result of direct negotiation between the war consumer and the generating agency, utilizing if necessary the facilities of others for a reasonable transmission charge, to the end that companies themselves having insufficient power to supply war plants should not be permitted to purchase from neighbors and resell to these plants at a substantial profit.

"When the rate schedules applied to war loads by utilities are those that have been approved by state regulatory authorities for application to the general public, it would appear that any necessary requests for renegotiation should be addressed to the state authority responsible for approving the standard rate. Such procedure would keep the problem of renegotiation in its proper channel."

—Report *of Committee on Public Utility Rates, J. W. Cornell of Idaho, chairman.*

"On the whole this joint functioning in such cases as OPA felt that it should intervene has, we think, been genuinely coöperative and entirely satisfactory. We have not always agreed with the director's construction of the statute and did not, with all due respect to the district court which passed on the matter, agree that the changing of a local rate in a bus

tariff constituted such a 'general increase' as was contemplated by the statute, but on the important question on rate regulation having been left with the regulatory commissions, the court has properly affirmed the intent of Congress."

—REPORT *of Special War Committee, Walter R. McDonald of Georgia, chairman.*

On Utility Conservation

"YOUR committee representatives at these conferences questioned the advisability and value of any such voluntary program and contributed the weight of its position to that of the electric industry that the contemplated conservation should not be confined to the electric industry which had, in spite of unfriendly predictions to the contrary, kept apace with the demands of war-accelerated industry for increased capacity, and further counseled that careful determination should first be made of the necessity for such conservation and when so determined that it should be required and the state commissions committed to provide the machinery for its enforcement.

"Studies made and submitted to these meetings by representatives of the electric industry established beyond doubt that the potential savings in the essential factors enumerated were relatively negligible when confined to the electric industry. For instance, the item of saving which first gave rise to the idea of the so-called 'brown-out' program was that of fuel, but a study disclosed that a successful 'brown-out' accomplishing a 10 per cent reduction in consumption would not effect a savings of more than three-tenths of one per cent of the total amount of coal used. The same thing was equally true as to other factors and there was obviously no excuse or justification of asking a part loaf simply because of ready machinery for dealing with this easily regimentable regulated public utility industry when the whole loaf could and should be had through the extension of the plan for the conservation of vital materials and man power to all forms of business and to both public and private activities."

—REPORT *of Special War Committee, Walter R. McDonald of Georgia, chairman.*

On Motor Carrier Regulation

"ACCORDING to records which we have obtained, the following represents the present status of reciprocity among the 48 staes:

"(a) Fourteen states in the Union have, by statute, the right to enter into full reciprocity with any other state.

"(b) Privately owned and operated trucks, trailers, and semitrailers, operating interstate, are granted reciprocity in 31 states, limited reciprocity in 16 states, and 1 state grants no reciprocity.

"(c) Privately owned and operated motor vehicles of war workers are granted full reciprocity in 23 states, limited reciprocity in 20 states, and 5 grant no reciprocity.

"(d) Privately owned and operated vehicles of members of the military forces have been granted reciprocity by all states. However, 12 states have regulations covering minor limitations.

"(e) Common and contract bus operations in interstate, exclusively, have been granted full reciprocity in 17 states, limited reciprocity in 19 states, and 12 have no reciprocity.

"(f) Common and contract bus operators, both interstate and intrastate, are granted full reciprocity in 10 states, limited reciprocity in 18 states, and 10 have none.

"(g) Common and contract truck operators, for hire, exclusively interstate, have full reciprocity in 19 states, limited reciprocity in 21 states, and 8 have no reciprocity.

"(h) Common and contract truck operators, for hire, in interstate and intrastate, have full reciprocity in 13 states, limited reciprocity in 17 states, and 18 have no reciprocity.

"(i) Common and contract truck operators for hire without loading or unloading cargo within the state are granted reciprocity, fully, in 19 states, limited reciprocity in 21 states, and no reciprocity in 8 states.

"(j) Common and contract truck operators dedicated exclusively to military personnel and/or equipment are granted reciprocity, fully, in 15 states, limited in 23 states, and 12 have no reciprocity.

"This over-all picture is interesting, in that it shows that there has been an increase in some form of reciprocity in about 30 per cent of the states as a result of the war and realization by the states that the matter of transportation between them is strictly a state proposition and does not need Federal control.

"We cannot help but feel that there has been a realization on the part of both Federal and state officials, who are well informed, that Federal legislation is not needed to straighten out the problems of uniformity of regulation

affecting motor carriers. As you know, we adopted this position with reference to Senate Bill No. 2015, known as the Big Truck Bill, and although similar legislation to that bill has again been introduced in Congress, there apparently has been no action taken to bring the proposed legislation on for hearing. Matters such as weights and sizes, and taxes, are items best known and therefore capable of most effective regulation by the states."

—REPORT *of Special Committee to Promote Uniformity of Regulations Affecting Motor Carriers, George McConnaughey of Ohio, chairman.*

On Rate Regulation

"YOUR committee believes that the time has come for those of us charged with the responsibility of administering public utility rates in the various states to devise workable plans for the fulfillment of the duties and obligations conferred upon us. We must determine the basis upon which utility rates are to be calculated and fix rates of return which are equitable both to the users of utility service and to the investors in utility securities. As umpires in the matter of rates, we should do this in the various states with as much uniformity as possible, and with a minimum expenditure of corporate and public funds for hearings, rate case proceedings, and formal litigation."

—REPORT *of Committee on Public Utility Rates, J. W. Cornell of Idaho, chairman.*

On Transportation Regulation

"THE Office of Defense Transportation, under the experienced leadership of Honorable Joseph B. Eastman, has been in constant touch with state regulatory agencies because many of its problems and questions have been the same as ours. Through war transportation committees, many of which have been headed by members of state commissions, there has been substantial progress effectuated in share-the-ride programs, staggering of hours, and more efficient utilization of public transportation. With some phases of the operation of the Office of Defense Transportation, we have not always been in complete agreement, but for most part a more efficient transportation has been maintained because of the coördination of the Office of Defense Transportation and state regulatory bodies through commission efforts and war transportation committee work.

We feel that other Federal agencies, such as the Office of Price Administration, have through lack of experience failed to recognize the prime necessity of transportation and the important sphere which must be occupied by state and local authorities. The administration of transportation in war time should, we believe, from a standpoint of national welfare, be lodged in one Federal agency and that agency by experience should be the Office of Defense Transportation, as far as a war agency is concerned."

—REPORT *of Committee on Progress in the Regulation of Transportation Agencies, George McConnaughey of Ohio, chairman.*

On Proposed Federal Power Act Change

SECTION 3. Subsection (c) of said § 201 is hereby amended to read as follows:

"(c) For the purposes of this Part, electric energy shall be held to be transmitted in interstate commerce only if transmitted from a state for or in connection with the sale thereof at wholesale, and consumed at any point outside of such state; but only in so far as such transmission takes place within the United States: Provided, That transmission of electric energy from the lines of one person to those of another in pursuance of a contract or arrangement between such persons for emergency service, or in pursuance of a contract or arrangement for an exchange of electric energy, according to the terms of which settlement for any variation in delivery is made upon the basis of the cost of production or of purchase of such energy, or because of a slop-over of electric energy between connecting lines or systems, shall not be held to be transmission of electric energy for compensation."

Section 4. Subsection (d) of said § 201 is amended to read as follows:

"(d) The term 'sale of electric energy at wholesale' when used in this Part means a sale of electric energy to any person for resale: Provided, That, when used in this Part or the Part next following, electric energy shall not be held to be sold at wholesale because it passes over the lines of one person to those of another person in pursuance of a contract or arrangement between such persons for

emergency service, or in pursuance of a contract or arrangement for an exchange of electric energy, according to the terms of which settlement for any variation in delivery is made upon the basis of the cost of production or of purchase of such energy, or because of a slop-over of electric energy between connecting lines or systems."

Section 5. Subsection (e) of said § 201 is amended to read as follows:

"(e) The term 'public utility' when used in this Part or in the Part next following means any person who sells electric energy at wholesale in interstate commerce, or who transmits electric energy in interstate commerce for compensation."

Section 6. Said § 201 is further amended by inserting after subsection (e) the following new subsections:

"(f) For the purposes of this Part, electric energy shall be held to be supplied for 'emergency service' when temporarily supplied by one person to another person during a period of emergency.

"(g) For the purposes of this Part, electric energy shall be held to 'slop over' when it passes from the lines of one person to those of another person in consequence of a sudden demand for energy on such other lines during the momentary period when such demand causes the systems of the two utilities to be out of balance."

Section 7. Subsection (f) of said § 201 is amended by relettering the same as subsection (h).

—RECOMMENDATIONS *of the General Solicitor for introduction in Congress, as approved by the membership.*

On Special Phone Toll Tax

"EFFECTIVE November 1, 1942, the Federal government placed in effect a tax on long-distance telephone message tolls of 20 per cent of the toll charge. By this method of taxation the government hoped to raise a certain amount of money as an aid in defraying the cost of the war which the country is now engaged in. Incidentally, a similar tax was placed in effect during World War I. The tax was removed shortly after the close of that war and it is expected that similar action will be taken when this present war has been won.

"From data at hand, consisting of statistics issued by the Federal Communications Commission for the year 1941, projected to the year 1942, which show an increase of approximately 26½ per cent, it is found that the annual revenues to be raised by this tax will amount to approximately $100,000,000. It is believed, however, due to the marked increase in telephone toll messages, that the actual money which will be realized from this tax will greatly exceed the estimate of $100,000,000. However, the exact amount that will actually be realized has no vital bearing upon the inequities caused by the imposition of this tax to the ratepayers in the different parts of the country or upon the remedy proposed to remove the inequities.

"The normal message toll charge itself is based upon the value of the capital invested in telephone toll facilities and the cost of rendering service. It follows, therefore, that the charges for this service will be greater or less according to the distance involved. Toll messages sent over long distances will call for greater investments in telephone plant with their greater costs of service than toll messages over shorter distances. To the extent that this differential in toll charges is based upon distances covered, the present method of fixing toll charges seems to be normal and proper. The toll message tax, however, is a transaction between the individual and the government. In that relationship no discrimination should exist among taxpayers in various parts of the country. Federal taxes should be levied on a basis that will affect all taxpayers alike and without regard to geographical considerations."

—STATEMENT *from report submitted by Charles F. Schaefer, Director of Public Service, Washington.*

On Fair Rate of Return under War Conditions

THE following tabulation is the result of a questionnaire circulated among the various state commissions by Chairman Frederick Stueck of the Missouri Public Service Commission in connection with a recent round-table discussion at the 1943 Chicago convention of the National Association of Railroad and Utilities Commissioners. Chairman Stueck asked each commission its reaction to three questions: (1) What was the fair rate of return considered reasonable prior to December 1, 1941? (2) Has there been any change in policy with respect to such return since that date? (3) What has been the effect of other war-time factors, such as the question of charging extraordinary "war taxes" against stockholders instead of operating expenses? The following digests of replies were those received by Chairman Stueck as of the time he prepared his report for the Chicago meeting:

SURVEY OF COMMISSION OPINION

(See note on page 505)

State	*Fair Rate of Return Prior to Dec. 1, 1941* (1)	*Considered Reasonable After Dec. 1, 1941* (2)	*Other Factors Considered in Rate Regulation during War Time* (3)	*Remarks or Comments in Addition to (1), (2), or (3), if Any* (4)
Alabama	6%, large utilities. 6-8% variation as to small utilities.	No change of policy has been determined.	No formal determination in any new rate proceedings to date.	Pres. White expresses personal opinion that reasonable treatment of war taxes would have effect on rate of return.
Arizona	6½% plus 2½% depreciation maximum. No hard and fast rule made.	No per cent change of rates reported.	No factors except war taxes discussed in response. Cf. (4).	Chm. Betts expresses position that war taxes should be borne by the shareholders.
Arkansas	No set per cent, but returns approximate 6%. Some rates based on sliding scale whereby efficiency and economy of management is rewarded.	No change of policy as to per cent change of rate of return, but cf. (3).	Chm. Hill expresses department as opposed to theory that war taxes should be charged *versus* shareholders for purpose of securing rate reductions, but likewise holding view that utility whose return has been reduced by war taxes should not be allowed rate increase merely to bring its return back to what was previously considered reasonable under normal conditions.	
California	6-8% varying upon the degree of risk and special circumstances.	No formal proceedings whereby rates have been changed.	Question of war taxes before commission in several formal proceedings but no decision has been reached. Pres. Havenner expresses view that war taxes should be borne by utility owners rather than consumers and that to treat such taxes as operating expense is *contra* to intent of Congress in imposing same. Said position taken by California in certain commission decisions made during World War I.	
Colorado	6-6½%, smaller utilities generally allowed higher rate than large utilities.	No change in per cent of rate. Cf. (3).	Chm. Sherman states commission has generally taken the position that absent abnormal conditions and abuses there should be as little disturbance as possible in existing regulations. Commission rate department recommends that utilities should be allowed to set aside deferred maintenance reserve for postwar conditions, said reserve to be not less than 3% of depreciable property and in such amount as utility is unable to make direct maintenance. No action taken to prevent charging of war taxes to operating expenses.	
Connecticut	Per cent not reported.	No change of policy.	Commissioner O'Connell states commission is giving serious thought to war-time problems of regulation and is interested in any crystallization of opinion.	
Idaho	Per cent not reported.	No change of policy to date.	Pres. Young reports likelihood of cases soon presenting question of war-time rate of return.	

Idaho	Per cent not reported.	No change of policy to date.	Pres. Young reports likelihood of cases soon presenting question of war-time rate of return.	
Illinois	No particular per cent of return applied to all or even classes of utilities. Cf. (4).	No change of policy as to per cent of return rate, but cf. (3).	As to war taxes the approach has been to calculate earnings both including and excluding said taxes and then allow return deemed fair under all the circumstances. Thus rate of 8.8% before taxes and 5.08% after taxes has been held proper.	Chm. Biggs states commission has uniformly allowed a lower rate in rate increases than would have been allowed the same company in a rate reduction case.
Indiana	6% average.	No pronounced change. Cf. (3).	Only 5 or 5½% allowed in two instances, but factors of service were involved.	In re application of Eastern Indiana Gas Co. for increased rates, Chm. Beamer expressed view that war taxes should not be fully allowed as operating expense. Stuckey, C., held *contra* and matter has not been passed on by full commission.
Iowa	Cf. (4)	Cf. (4).		Chm. Reed reports that Iowa commission has no jurisdiction of rates of electrical power or telephone companies and no established policy as to per cent of return of railroad companies.
Kansas	Per cent not reported.	Per cent not reported.	Chm. Beck reports that commission has not been called upon to determine a definite fair rate of return.	
Kentucky	6%.	6%.	Chm. Greenleaf reports general policy of commission with respect to rate of return has not changed since December 1, 1941. In re war taxes in case of Commission *v.* Kentucky-Tennessee Light & Power Co., the commission allowed as operating expenses only such Federal income taxes as would have accrued under 1941 Int. Rev. Act, but pending appeal the company was purchased by city of Frankfort and appeal dismissed.	
Louisiana	Per cent not reported.	Per cent not reported.	Secretary Frye reports no late decisions or determination of problem of war taxes.	
Maryland	6%.	Increases limited to 6%.	Chm. Purcell states that it is the current policy of the commission to prevent any increases in rates during the war period but that the commission has also observed caution in reducing rates where rate of return is more than 6% due to war-time expansion when the company is disposed and has need to set up reasonable reserves for accelerated depreciation and deferred maintenance. No ruling has been made on war taxes but Chairman expresses inclination to exclude such taxes from operating expenses.	

State	Fair Rate of Return Considered Reasonable Prior to Dec. 1, 1941 (1)	After Dec. 1, 1941 (2)	Other Factors Considered in Rate Regulation during War Time (3)	Remarks or Comments in Addition to (1), (2), or (3), if Any (4)
Massachusetts	No rule set as to definite per cent of return.	Cf. (1).	No action taken in matter of war taxes. Same being considered.	Secretary Brooks states long adherence by the commission to the view that rates should allow adequate return on stockholders' prudent and honest investment.
Michigan	Per cent not reported.	Per cent not reported. Cf. (3).	Chm. Shilson submits commission's rate investigation of Detroit Edison Co. (Case D-1722, decided July 17, 1943) passing on war taxes and other matters. Case unequivocally holds that war taxes should be charged to operating expenses and not distinguished from any other type of expense. City of Detroit sought rate reduction rather than company seeking increase. Commission found that company was earning 4.75% rate of return on rate base recommended by city as petitioner, which base the commission determined less than its own finding of fair value. Company evidently sought no rate increase and present rates were held reasonable, certain language of opinion even intimating that 5% rate of return would not be considered excessive. (Above rates net after war taxes and other deductions.)	
Minnesota	7% (street railways). 6% (telephones).	6% (street railways).	Chairman Matson states matter of war taxes was raised by some witnesses in recent case but not pressed by counsel and that commission did not find it necessary to pass upon same in its order deciding cause. No jurisdiction over rates of water, gas, and electric companies.	
Missouri	6¼% generally.	6¼% (one major case).	Missouri to date has considered all types of taxes as expenses.	
Nebraska	7% (street railway).	No per cent reported.	Commission has taken recognition of Federal government's economic program to stabilize commodity prices and cost of living. In recent cases before the commission the estimated return under applied for rates has been so meager that determination of fair return or consideration of war factors has been of little moment.	
Nevada	Per cent not reported.	Per cent not reported.	Chm. Sexton reports recent holding to effect that part of war taxes must be stood by the utility rather than being deducted from earnings in determining rate of return.	
New Hampshire	Per cent not reported.	Per cent not reported.	Chm. Hunter states that war taxes have not been passed upon but reports that under certain tariffs with "Fuel Clause" provisions the electrical utilities are allowed to bill customers for excess fuel costs. War-time increase of fuel costs to the utilities has thus caused correspondingly higher increases over regular service rates. Said item of extra charge is computed monthly and customer's bill shows additional charge.	

caused correspondingly higher increases over regular service rates. Said item of extra charge is computed monthly and customer's bill shows additional charge.

New Jersey	Per cent not reported.	Per cent not reported.	Pres. Conlon reports that regulations have been established and publicized whereby utilities must show clear and unquestionable grounds for rate increases. Increases which either incur or increase excess profit taxes are restricted. This appears to be a "hold the line" policy applied to utility service charges.	
New Mexico	6½% used as guide but not as set rule. Size of utility and cost of money considered.	Have not favored increased service charges merely to allow normal peace-time rate of return. Cf. (3).	Chm. Miles joined with remaining Commissioners Manson and McGinnis report local situation to be that several of their utilities have suffered a slump in business and are not earning a normal prewar rate of return, but favor policy of nonincrease in charges absent confiscation of property. Where excess profit taxes do exist the commission believes it unfair to shareholders and ultimately to the public (later effect on interest rates in utility financing) unless said taxes are paid out of income as operating expense. War conditions have accelerated depreciation of plant and steps should be taken to require utilities to set up reserves for deferred maintenance and accelerated depreciation thus reducing net operating income and possibly the normal per cent of return.	
North Dakota	Per cent not reported.	Per cent not reported. Cf. (3).	Pres. McDonald expresses the attitude of the commission as being that the rate of return under war conditions cannot be judged in the same light as under normal times and that investors should not be shielded from all financial sacrifice. Excess profit taxes should be disallowed in a rate proceeding or if all taxes are allowed as operating expenses then a rate of return substantially lower than a normal rate ought not to be considered unreasonable.	
Ohio	6-6½%.	6-6½%.	Chm. McConnaughey reports no major rate cases determined since December 1, 1941, but that a large rate case involving the city of Cleveland and East Ohio Gas Company, with OPA intervening, has just been concluded and the commission's opinion is pending. War taxes and other factors are presented for determination in said cause.	
Oregon	No formal rate bases or per cents of return have been determined.	Cf. (1).	No change of policy as to establishing of definite rate base or rate of return.	Commissioner Flagg reports that no attempt has been made to charge war taxes *versus* shareholders and takes position that both the Uniform System of Accounts and the recent decision in the Hope Natural Gas Co. *v.* FPC sustain view that all taxes should be treated as operating expenses.

State	Fair Rate of Return Considered Reasonable Prior to Dec. 1, 1941 (1)	After Dec. 1, 1941 (2)	Other Factors Considered in Rate Regulation during War Time (3)	Remarks or Comments in Addition to (1), (2), or (3), if Any (4)
Pennsylvania	Per cent not reported.	Per cent not reported.	War-time factors listed as considered: (A) Artificial economic situation making present regulation difficult. (B) Continuous use of equipment and departure from maintenance routine. (C) Scarcity of maintenance personnel and materials. (D) Installation of equipment for war use only. (E) Hastening obsolescence due to war-time development of new inventions.	Recognizing the fact that many utilities may be realizing abnormal earnings during the present emergency, Chm. Siggins, Jr., joined with a majority of the commission have issued a statement of policy advocating that utility earnings be held to strengthen the financial position of the companies and meet postwar problems, and further advising utilities that their present management of funds from abnormal profits will be closely checked when regulation of rates under normal time is again imposed. Commissioner Buchanan strongly dissents against such policy and advocates active war-time regulation immediately. Without presuming to pass on which views advanced are correct, it is suggested that both the "Statement of Policy" and the "Dissent" are stimulating and well worth study.
Texas	Per cent not reported.	Per cent not reported.	Chm. Jester states that nature of business and fluctuating return of common carriers is such that establishment of fair fixed rate of return for any duration of time is extremely difficult. Rate of return for railroads for many years believed to have been under 5.75% rate established by Congress in Transportation Act of 1920.	
Virginia	6-7%, with special exceptions under unusual circumstances.	No general departure from prewar policy.	No formal ruling as to war taxes and no ruling reported as to other possible war-time factors.	Chm. Hooker stated that in informal consideration of rates all taxes incurred by the utility have been treated as part of operating expenses and no reason is seen for charging same *versus* shareholders.

Because of war-time conditions, Director Schaefer reports that the

part of operating expenses and no reason is seen for charging same *versus* shareholders.

Washington	4½% and 8% in two particular instances; 6% as usual rate.	No formal determination since Dec. 1, 1941.	Because of war-time conditions, Director Schaefer reports that the department of public service has called particular attention of all utilities to state statutory provisions requiring excess earnings to be placed in a reserve fund for future use as provided by statute and proper order of the department. Regulations have been promulgated looking to the proper creation of such reserves and their uses. Under the Washington law said reserve can be used to offset loss of earnings in subsequent years or for establishing, replenishing, or maintaining amortization, depreciation, or other contingent funds or reserves; or for any other purpose beneficial to the consumers. By reason of such prior statute (§ 14 of Chap. 165, Laws of 1933) it appears that the Washington department is in a more fortunate position than many other commissions in so far as war-time regulation is concerned. Director Schaefer expresses doubt as to the wisdom of treating war-time taxes in any different manner than normal income taxes.
Wisconsin	6% generally, over 7% deemed excessive.	Sought to hold rate down to normal times.	Chm. Peterson states as policy of commission that where rate of return has decreased below normal due to war factors the utility should stand some reasonable loss, although service charges shown to be unreasonably high should not be frozen at such level. He also reports as his personal view, however, that war taxes should be treated as any other item of expense rather than being borne by the shareholders.
Wyoming	6% on prudent investment deemed fair.	No definite change of policy, but only few cases presented.	Commissioner Prieshoff does not report as to any particular war-time factors considered in late rate determinations. States that commission does not allow Capital Stock Taxes based on declared valuation, and which directly affect the Declared Value Excess Profit Tax, Federal Income Tax, and Excess Profit Tax, as an operating expense when used in rate making. No direct commission determination as to Excess Profits Tax itself.
Dist. of Columbia	6-6½%, varies among classes of utilities.	6-6½%, varies among classes of utilities.	The District of Columbia commission determines rates to be charged annually under the sliding-scale arrangement (commonly known as "Washington plan"). From Chm. Flanagan's report it is deemed that rate of return considered reasonable has been established as to the period prior to December 1, 1941, and also during the present annual test period at the rates shown *contra*. At present the commission is investigating the matter of the basic rate of return of utilities in addition to its annual investigation dealing with the service charges, etc., as regulated and adjusted annually. It is the policy of the commission that excess profits taxes should not be allowed as a deduction and that the maximum rate allowable for income taxes should be 31%.

The March of Events

WPB-FPC Gas Agreement

THE agreement signed by Chairman Donald M. Nelson, of the War Production Board, and Chairman Leland Olds, of the Federal Power Commission, governing the relations between their respective agencies in handling matters concerning natural gas supplies and requirements, provides that, in order to avoid duplication of effort and confusion and to make the most effective use of their staffs and information, the WPB, acting through the Office of War Utilities, and the FPC observe and will continue to observe the following definitions of their respective responsibilities and the following procedure in carrying them out:

(A.) *Responsibilities of WPB*

Provides that the WPB has exclusive responsibility for the following problems arising out of the supply of natural gas for the war program:

(1) Development and administration of programs to assure that the equipment and materials which can be made available for the purpose of supplying natural gas are allocated where and when the need is most urgent from the standpoint of the military and war production program, keeping in mind the needs for natural gas for civilian purposes. This includes priority control and allocations of materials and equipment for all systems transporting and delivering natural gas and for industries operating or installing facilities for the supply or utilization of natural gas.

(2) Determination of the supplies of, and demands for, natural gas in relation to the military and war production program and essential civilian activities. This includes the programming of natural gas requirements for war production and for the armed services.

(3) The mobilization of natural gas supplies to meet war production requirements and the development and administration of programs for better coördination in the operation of natural gas transportation facilities, including integration and interconnections, to assure an adequate supply of natural gas for war production industries, the armed services, and essential civilian service, including the expansion of existing natural gas transportation facilities where needed to meet such requirements.

(4) The planning, development, and administration of natural gas supply allocation programs for those regions where the available supply proves insufficient to meet all requirements.

(B.) *Responsibilities of Federal Power Commission*

Provides that the FPC will in the public interest continue to exercise its full statutory powers as set forth in the Natural Gas Act, and amendments thereto, the principal of which are as follows:

(1) (a) Pursuant to §7(a) of the act, to require extension and interconnection of facilities for the interstate transportation and sale of natural gas to distribution companies and distribution centers. (b) Pursuant to §7(b), to control the abandonment of facilities and service of natural gas companies. (c) Pursuant to §7(c), to determine whether public convenience and necessity require the construction of new, or extension or acquisition of existing, natural gas interstate transportation facilities, and to issue certificates of convenience and necessity therefor.

(2) The fixing of rates for the transportation and sale of natural gas in interstate commerce; and the control of the importation and exportation of natural gas.

(3) The supervision of accounts and rates of depreciation of natural gas companies subject to the commission's jurisdiction.

(4) The collection, compilation, and tabulation of information regarding receipts, transportation, distribution, and sale of natural gas throughout the United States; and regarding the operation, management, control, service, rates, and contracts of agencies transmitting or supplying natural gas.

(5) Surveys and determinations of natural gas supplies and reserves, the determination of the economic feasibility and adequacy of transportation facilities for the delivery and utilization of such natural gas supplies.

(C.) *Arrangements Respecting Priorities and Certificates*

(1) In the consideration of applications filed with them, WPB and FPC will freely interchange information and so conduct their investigations as to eliminate duplication of effort and secure maximum efficiency of the staffs of both agencies. Joint conferences with applicants may be held whenever such action is desirable to clarify the procedure in

connection with or expedite the disposition of such applications.

(2) With respect to the exercise of the commission's authority under §7 of the Natural Gas Act, as amended, it is understood that, during the continuance of the war, action will be taken and orders will be issued by the commission only after prior consultation with WPB to make certain that any proposed facilities are essential in the war effort, to assure that materials can be made available therefor, and to make certain that, in the case of proposed abandonment of facilities or services, the abandonment is consistent with the war effort.

(3) With respect to any matters under consideration by WPB involving the construction, extension, or abandonment of natural gas pipe lines which require the approval or certification of FPC, under the provisions of the Natural Gas Act, as amended, it is understood that, during the continuance of the war, action will be taken and order will be issued by WPB only after prior consultation with FPC, and when preference rating certificates and allotments of materials are issued by the War Production Board in such cases they will be accompanied by a statement that the issuance is upon the condition that applicant will promptly take all steps necessary to comply with any applicable requirements of the Natural Gas Act.

(D.) *Procedure and Use of Staff*

In order to obtain maximum effectiveness and avoid duplication of effort, the WPB and the FPC agree that

(1) All information and all such studies and compilations as the commission may make in carrying out its functions as outlined above will be made available to the WPB, such as: (a) Monthly reports on natural gas receipts and deliveries. (b) Periodic reports describing natural gas supplies and transportation facilities and interconnections of such facilities. (c) Periodic reports on interruptible natural gas supplies and loads. (d) Reports on stand-by facilities. (e) Investigations of rates in connection with transportation and sale of natural gas and in connection with contracts for interruptible supplies of gas.

(2) The commission will make such specific additional studies as the WPB may request which can be carried out with available personnel and without interfering with the essential statutory functions of the commission.

(3) In times of emergency the commission will, if requested by the WPB, make available temporarily such members of its staff as can be spared from other work to assist the staff of the WPB to carry out programs essential to securing an adequate supply of natural gas for military needs and war production and essential civilian requirements.

(4) The Office of War Utilities will submit its basic general orders in the natural gas field (such as Limitation Order L-31) to the commission for consideration and recommendation in accordance with the procedure governing the circulation of OWU orders within the WPB in such matters.

(5) In order to secure maximum efficiency and economy, the OWU of the WPB and the division of finance and statistics of the FPC, with the approval of the division of statistical standards, Bureau of the Budget, will work out procedures in the collection and compilation of statistical information having a general or national coverage, to avoid duplication and impose upon industry the least burden compatible with securing sound and satisfactory results.

The agreement provides that nothing herein shall be construed to be in conflict with existing arrangements between the War Production Board or the Federal Power Commission and the Petroleum Administration for War, nor with the provisions of Executive Order 9276 establishing the PAW.

Power Contract Announced

SECRETARY of the Interior Harold L. Ickes on September 28th announced that he had executed on behalf of the United States a contract for the sale of the first block of power from Shasta dam of the Bureau of Reclamation's Central Valley Project (California) to the Pacific Gas and Electric Company, with headquarters at San Francisco. A minimum annual payment by the company of $2,775,000 beginning in 1945 is guaranteed.

The contract was signed by President James B. Black for the PG&E on September 16th following authorization by his board of directors on the previous day. Secretary Ickes approved the contract on the recommendation of Commissioner of Reclamation Harry W. Bashore.

Under the agreement the United States will transmit power to the company over a 97-mile transmission line which the Bureau of Reclamation is building from Shasta dam to Oroville, California. It will deliver the energy to the PG&E at the Shasta substation (25 miles from the dam) and will lease temporarily to the company, for a monthly rental charge of $6,250, the portion of the line extending from this substation to Oroville. The Shasta dam power plant is scheduled to begin operating in March, 1944, with an installation of 150,000 kilowatts.

"As a war measure, it is imperative that the power from Shasta dam be made available for war loads at the earliest possible moment," Secretary Ickes said. "Because of the shortages of critical materials and the orders of the War Production Board limiting the Bureau of Reclamation to the construction of a single transmission line, this can be achieved most expeditiously by disposing of the power to the Pacific Gas and Electric Company.

"Two provisions of the contract are of the utmost importance. One stipulates that the United States may withdraw power from its

commitment to the company for any purpose including sale to other customers. It is also agreed between the United States and the company that they will endeavor by mutual agreements supplementary to the main contract to carry out the provisions of the Reclamation Law which require that preference shall be given public agencies and coöperatives in the lease or sale of power. Any public agencies or coöperatives that want to buy Shasta power need not wait to apply until after the war but may do so whenever they are ready. Every effort will be made to work out arrangements for serving them.

"The rate established by the contract guarantees to the government a fair and equitable price for the power during the war. Moreover, an ample rental will be obtained for the company's use of the transmission line from Shasta substation to Oroville. This line is a part of the permanent plan of the project. It is reasonable to anticipate a total income in excess of $3,000,000 per year under the contract. The short term of the contract—not to exceed five years—will guard against any long-time tie-up of the power from this great project in the hands of a single purchaser and will guarantee availability of the power for the most widespread public benefit after the war. The rights of the government to dispose of the output of the project plant for the long-term development of the region in the public interest are protected."

Funds for the transmission line were provided by Congress in the Interior Department Appropriation Act, 1943. Priorities for the aluminum conductor were granted by the War Production Board, and some of the equipment is on the ground. Commissioner Bashore said work will be expedited to have the line ready when power is available for transmission.

The contract with PG&E stipulates that until January 1, 1945, the company will take as much of the output as its system can absorb. After that date it will take and pay for 150,000 kilowatts of power capacity and 800,000,000 kilowatt hours annually. It will pay a readiness-to-serve charge of $125,000 per month after January 1, 1945, and an energy rate of 1.5 mills per kilowatt hour for all power taken.

Ouster Drive Hurting REA

A PAMPHLET militantly defending Harry Slattery as head of the Rural Electrification Administration, and tracing the fight to oust him to his opposition to the stalled insurance scheme of the National Rural Electric Coöperative Association, has been published by Judson King, REA consultant, director of the National Popular Government League, and Slattery's close friend.

The document, carrying on the printed warfare between King and Clyde T. Ellis, executive manager of the NRECA, that has been aired in recent issues of this magazine, was expected to fan the nation-wide controversy over Slattery to a new pitch. Ellis declined to comment on the charges in King's newest statement, for the present.

The pamphlet was highlighted by a hitherto unpublished letter sent in June to Ellis by former Senator George W. Norris, of Nebraska, after Ellis and others had importuned him to join in the attack on Slattery. Norris' letter, as quoted by King, said in part:

"I have just read your letter of June 22nd. In this letter you do as you have done in previous letters; to wit, ask me to join with you and the NRECA in demanding the removal of Harry Slattery as the administrator of the REA.

"I am not trying to defend Slattery because in my judgment no charge has been made against him so far as I know that needs a defense.

"The main thing . . . is that your association wanted to organize an insurance company on the coöperative basis, and that Slattery for a time seemed to be favorable to such consideration, but for some reason changed his mind and became an enemy to this insurance plan.

"It seems that the charges narrow down to this. Slattery is unfriendly to some insurance plan, a plan not fully described. Notwithstanding the fact that at one time he was favorable to coöperative insurance, he would not go along in this plan, and, therefore without any trial, without any ceremony, he must be removed. . . . You are doing a great injury to the REA in my judgment."

Norris, respected by all leaders in the public utility field, was one of the fathers of the REA, TVA, and similar public utility enterprises.

The Senate Agriculture Committee was scheduled to open hearings to determine the factors behind the concerted move to discredit Slattery.

Panama Sells Light Plants

THE Panama Electric Company, a subsidiary of the Electric Bond and Share Company, has paid $250,000 for 16 electric light plants owned by the government of Panama in various towns in the interior of the republic.

The government of the deposed president, Arnulfo Arias, stopped the company's operation of streetcars in Panama City and threatened expropriation. The sale was arranged by Colonel Manuel Pino, Minister of Public Works, and Eduardo de Alba, manager of the National Bank of Panama.

WPB Decentralization

A PLAN to decentralize the War Production Board, putting most of the paper work up to 13 regional offices and leaving only overall controls in Washington, was adopted on September 21st at the first meeting of the WPB

Operations Council and announced by H. G. Batcheller, operations vice chairman.

The plan was expected to eliminate 33 per cent of the necessary travel by businessmen to Washington, slash routine paper work for businessmen from 25 to 40 per cent, and gear the WPB organization to "greater speed and responsiveness," Mr. Batcheller said.

The program provides for a sweeping decentralization of the whole operations function. It will move out of Washington much of the machinery of production control and give greater autonomy to the 18 regional offices and the 92 district offices of WPB.

It is believed that the move will create, in effect, 13 "little WPB's," able to function without active assistance from Washington except in basic policy matters and in the instance of problems which are beyond their own resources. Each regional director will now be known as a "regional chairman," and within his own area his job will roughly parallel that of the WPB chairman.

The position of deputy vice chairman for field operations was abolished, since the regional chairmen will work directly with the operations council.

Utility Order Changed

MINOR changes in the basic utilities order, U-1, were made on September 24th by the War Production Board. Most important was the change in rating from AA-1 to AA-3 for replacement of inventory of supplies used to construct lines to consumer premises to bring this rating in line with others for construction purposes.

Rate Slash Eased in Argentina

THE Federal commissioner of Mendoza province on September 22nd modified a decree ordering a 25 per cent decrease in electric power rates, thereby affording a measure of relief to the Andes Electric Company, which is a subsidiary of the American & Foreign Power Company.

The new regulation made the rate cut applicable only to commercial residential consumers. These represent 90 per cent of the company's customers, but they consume only 25 per cent of its power.

A company official said the modification improved the situation, although the loss of revenue still would be considerable.

A decree affecting another American & Foreign Power subsidiary in Buenos Aires province was suspended last month pending further investigation. The company had contended the decree would have caused it to operate at a loss.

Gas Pipe Line Voted

EASTERN war production centers were recently bulwarked against a natural gas shortage in the winter of 1944-45 as a result of the Federal Power Commission's approval of a "Big Inch" pipe line tapping reserves in southern Texas.

Spurred by warnings of diminishing supplies in the West Virginia-Kentucky producing area, the FPC on September 21st announced it would issue a certificate to the Tennessee Gas & Transmission Company—a newcomer in the gas industry—to build a 1,228-mile, $47,500,000 line from Corpus Christi, Texas, to Cornwell Station, West Virginia.

The new supply, estimated at 207,000,000 cubic feet daily, is intended for distribution in Ohio, Pennsylvania, and New York.

Still unsettled at the time was the fate of a rival application by the Hope Natural Gas Company of West Virginia, which had asked the commission to approve a 1,140-mile line from the Hugoton fields in southwest Kansas to its distributing terminal at Cornwell.

The commission acted speedily in approving the Tennessee Company's application, beating by nine days the deadline of October 1st set by the War Production Board for the placement of orders for 215,000 tons of steel required for the line. It was believed the Hope Company was eliminated by announcement of the War Production Board that it would issue materials priorities for only one line.

Opponents of the proposed line, led by coal and railroad interests, challenged the proceedings on the ground that the commission surrendered its powers by accepting the WPB decision as to the pipe line's necessity.

The proposed line is intended to provide additional gas supplies for distributing companies of the Columbia Gas & Electric Company system and for distributing units affiliated with the Hope system. Columbia companies serve Cincinnati, Columbus, and other central Ohio communities, while Cleveland, Akron, Youngstown, Pittsburgh, and other areas in northern Ohio and western Pennsylvania are served by the Hope affiliates.

Arkansas

Power Contract Held Up

NEGOTIATIONS between the city of Little Rock and Arkansas Power & Light Company concerning renewal of a contract for purchase of power by the city for redistribution reached a stalemate, Mayor Neely said recently.

The city was seeking a lower rate and hoped to bind itself to a shorter-term contract

than the 30-year agreement which expired October 1st.

Mayor Neely would not confirm a current rumor that the city would install its own plant.

What action would be taken if no agreement was reached by October 1st was not revealed. A large part of the city's revenue is derived from the sale of power.

California

Approve Bond Issue

VOTERS in Imperial valley last month approved an Imperial Irrigation District $6,000,000 power bond issue to finance purchase of the California Electric Power Company's properties in Imperial and Coachella valleys. About 31 per cent of the district's registered vote was cast, with 1,862 ballots favoring the issue and 991 opposing it.

Of the entire issue, $4,900,000 is for the purchase price of the properties. Other allotments are: preliminary expenses, $70,000; consolidation of improvements in the district's present power system and acquired properties, $750,000; additions and betterments of the combined system over a 3-year period, $205,000; investigations and designs for the power plant, $75,000.

The district was scheduled to take over the new properties on October 5th.

President Acts in Transit Crisis

PRESIDENT Roosevelt on September 23rd created a special emergency board drawn from the National Railway Labor Panel to handle the wage dispute affecting employees of the Pacific Electric Railway Company of Los Angeles.

Under the executive order setting up the board, it was directed to file a report on or before October 15th, and Fred M. Vinson, Director of Economic Stabilization, was notified to act on it within ten days thereafter.

Pacific Electric workers voted to strike on September 24th. They charged Mr. Vinson had given the dispute "run-around" treatment.

The strike was terminated on September 26th after 1,500 members of the Brotherhood of Railway Trainmen, heeding appeals of their leaders, voted to end the walkout. Service on the company's lines was halted two days.

A strike was threatened in July when the employees' demand for a 13-cent hourly wage increase was disapproved by Mr. Vinson. Mr. Roosevelt averted it then by promising speedy action, and Mr. Vinson later named a committee to study the transportation wage structure in the Los Angeles area.

The special board would be composed of three members, the President said, to be selected by him. They shall report to him, he added, "what if any wage adjustments for employees of the Pacific Electric Railway Company . . . should be made, within the limitations of the [Stabilization] Act of October 2, 1942, and the executive orders and directives issued thereunder."

He said the board report should be patterned after proceedings of the emergency board which reported to him last spring on the same dispute. It should also be based on relevant material in the so-called Maris report filed with the Railway Labor Panel on September 10th.

Colorado

Gas Funds Loaned Uncle Sam

INVESTMENT of upward of $3,000,000 of court-impounded funds—money lying idle pending outcome of the Denver natural gas cases—in war bonds was agreed to recently.

The gas rate cases, appealed to the Tenth Federal Circuit Court from an order of the Federal Power Commission for cuts in wholesale rates on gas brought to Colorado and Wyoming from Texas fields, had been scheduled for argument September 14th.

Senior Circuit Judge Phillips announced from the bench shortly after court opened that arguments would be heard that afternoon and then presented to attorneys for their consideration the proposal that the impounded funds held by the clerk of the court in the First National bank be invested in war bonds.

Numerous prominent attorneys interested in the rate cases held a consultation and all agreed that use of the idle money to further the war effort through purchases of short-term securities was a wise policy and would have no effect on the outcome of the litigation.

One of the cases up for argument was that of the Colorado Interstate Gas Company, which brings gas from Clayton, New Mexico, to Denver for sale to the Public Service Company of Colorado and to other distributors, including the Pueblo Gas & Fuel Company and the city of Colorado Springs.

The other case involves the Canadian River Gas Company, which produces gas in the Texas Panhandle field and sells to the Interstate Company.

The third gas rate case involved the Colorado-Wyoming Gas Company.

Illinois

Transit Plan Barred

A PLAN for reorganization of the Chicago Surface Lines as a separate entity and its removal from receivership, which has been submitted to Federal District Court Judge Igoe, was recently opposed by Mayor Edward J. Kelly. Mr. Kelly asserted that unless the reorganization included unification with the Chicago Rapid Transit Company (elevated) lines the city would refuse to issue a franchise.

The separate reorganization proposal was made by a committee of lawyers named by the Federal court, and attorneys for groups holding first mortgage bonds of the surface lines urged adoption of the plan. Henry F. Teney, representing the bondholders, said it would be a step toward consolidation with the elevated lines and indicated that under the proposed setup the streetcar company would be able financially to acquire the "El" for operation either by purchase or lease.

Indiana

Asked to Review Light Bill

A REQUEST that the state public service commission consider the city's light bill in its study of the rates charged by the Indianapolis Power & Light Company was made recently by Mayor Robert H. Tyndall of Indianapolis.

Mayor Tyndall said he had written the commission, pointing out that the city's light bill of $416,754.46 was a large item in the expense of the municipal government and that any reduction that could be effected would benefit taxpayers. The mayor said he had not taken any action about the commission's current investigation of the fares charged by Indianapolis Railways, Inc. He said he favored a uniform system of fares and transfer charges. He said he had expressed this opinion at a recent conference with Harry Reid, president of the railway company, who told him officials of the company also believed a uniform fare to be the best.

Iowa

Franchises Approved

WATERLOO voters in a special election last month approved extension of two Waterloo, Cedar Falls & Northern railway franchises for operation in Waterloo.

On the proposed renewal of the interurban and street railway franchise for twenty-five years, the vote was 1,098 "yes" and 32 "no."

On the question of renewing the bus franchise for ten years the vote was 1,119 "yes" and 29 "no."

Kansas

State Faces Gas Shortage

HAROLD L. EASTMAN, engineer for the Cities Service Company, testified last month at a special Senate committee hearing inquiring into the fuel supply situation in the Kansas area that his company would fall 10,000,000,000 feet short this winter of supplying customers.

Gas customers would need to use 180,000 tons of coal and 800,000 barrels of fuel oil to overcome the gas shortage, Eastman added. He said the company failed by 3,500,000,000 of supplying its customers with gas last winter.

Eastman said his shortage forecast was based on the period from October 1st to January 31st, after which date the company expected the Hugoton line to be in operation.

"There have been 250 to 400 coal truck mines closed in the last three years in Missouri and Kansas," Senator Clyde M. Reed said.

Kentucky

Lacks Jurisdiction

THE Frankfort electric and water plant board recently declared that, because the power and water systems it operates in Frankfort are municipally owned, the state public service commission lacks jurisdiction over rates charged consumers.

The state commission had ordered a rate adjustment or a hearing by September 20th when more than seventy suburban consumers complained in a petition that rates established by the board for rural consumers were higher than rates set for city consumers.

The board on September 17th answered the petition, citing its jurisdictional contention, and denying the protestants' charge that the suburban rates are discriminatory.

T. B. McGregor, commission member, indicated a hearing on the jurisdictional question, which necessarily must precede consideration of the rate issue, would be scheduled in the near future.

When the city on August 20th took control of the utilities, which it bought from Tri-City Utilities Company for $1,200,000, it lowered electric rates about 15 per cent on the average and decreased the average water rate slightly, effective with October bills.

The suburbanites protested that, under the new schedule, they are charged $1.25 for the first 20 kilowatts of electricity a month, while city users pay $1, and that the minimum rural monthly water bill is $1.80 compared with $1.20 in the city. The board maintains the "slight differential" between rural and city rates represents a "service charge to defray somewhat higher costs of operation and maintenance in the outlying districts."

Distribution of $59,040 among Frankfort electric consumers after deduction of a $1,000 attorney's fee was ordered by Circuit Judge W. B. Ardery on September 20th. The fund is to be apportioned among some 4,000 consumers who paid bills between December 1, 1942, and August 1, 1943. It represents money set aside under Judge Ardery's order after the public service commission's 22.3 per cent rate cut order was appealed by the Kentucky-Tennessee Light & Power Company, which owned the Frankfort system at the time the rate issue was raised.

Nebraska

Fail to Agree on Power Vote

A DIFFERENCE of opinion between Mayor Wes Trail and Finance Commissioner F. E. Ziegenbein, who make up Nebraska City's 2-man council, last month resulted in no vote on a proposal to reopen the city's condemnation suit against Consumers Public Power District.

Ziegenbein proposed that the city go ahead with the suit, declaring "We'll be sitting here high and dry while other towns go ahead."

Mayor Trail took an opposite view, declaring "It would cost a lot of money. It doesn't seem to me, in view of the election, that people want to buy it. I wouldn't be in favor now."

"Then you aren't for municipal ownership?" asked Ziegenbein.

"Not at the present time," replied the mayor.

Commissioner Ziegenbein made a motion to reopen the suit, but the mayor said he could not second it. As a consequence no vote was taken. The city turned down a proposal to purchase Consumers' distribution system at the last election.

New York

Utilities Should Save Cash

THE state public service commission indicated last month that unless the public utility companies conserve their war-time profits for nostwar improvements, it would reduce rates and charges for the public benefit.

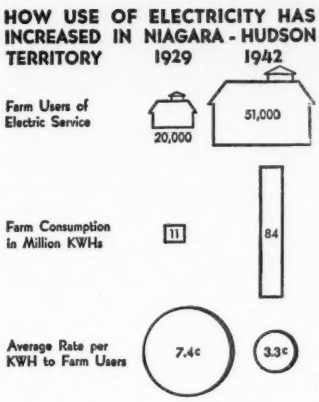
The commission revealed its stand in an announcement ordering Triple Cities Traction Corporation of Binghamton to temporarily reduce bus rates by about $90,000 annually. Permanent rates will be determined after the commission concludes its findings. The temporary rate was ordered by a vote of 3 to 1, with Chairman Milo R. Maltbie and Commissioners Maurice C. Burritt and George A. Arkwright affirming, and Commissioner Neal Brewster dissenting.

In the majority opinion the commission stated that when the war is over or even before, "if it is possible to secure additional facilities to replace the substitutes which have been temporarily passed for operation and to replace equipment that is rapidly wearing out, utilities will need to have unusual amounts of cash. For such purpose it would be improper to issue additional securities."

The commission said that unless utilities conserve their funds or improve their financial status by retiring securities outstanding, they will not have much needed cash and their financial structure would be such that they could not be allowed to issue securities.

Farms Lead in Use of Electricity

THE state public service commission has permitted the new liberalized rural line extension plan of the Niagara Hudson system companies to become effective as of September 24th, Earle J. Machold, president of the Niagara Hudson Power Company, announced



recently. The plan, designed to complete the electrification of the system's rural areas, will enable all customers, whose farms meet the requirements of the War Production Board, to obtain electric service by paying a minimum monthly charge of $2.

Rural electrification has made more rapid progress in New York during the past thirteen years than in the entire previous history of the state, if the rate of growth within the territory served by the Niagara Hudson system may be accepted as a criterion, and well it may, for this area contains 68,000 of the state's 153,000 farms listed in the 1940 census.

To illustrate the extent of this development, the Niagara Hudson Power system has made public a set of comparative figures showing the expansion of its farm business between 1929 and 1943, 1929 being selected because that was the year when the separatelv operated companies in the area were merged into a single coördinated system.

These individual companies had fewer than 20,000 rural customers in 1929, as compared with the system's 51,000 last year. Moreover, the 1929 customers apparently used electric service for a very limited number of purposes, for their total purchases were only 11,000,000 kilowatt hours, while last year the total was 84,000,000, an increase of 663 per cent.

Commission Continues Inquiry

THE state public service commission on September 17th insisted upon continuing investigation of a proposed reconsolidation of the Niagara Hudson system's gas and electric companies despite a protest. Hearings begun on September 15th were adjourned until October 11th, after the commission had overruled an objection by Randall J. LeBoeuf, counsel for the system, that the commission had no jurisdiction to delve into original costs and other accounting details, and that such a course might delay a reorganization for years, which would be an injustice to some 115,000 stockholders—70,000 in New York state—from whom dividends are being withheld pending the reorganization.

The reconsolidation plans were drafted after the Securities and Exchange Commission ordered, last September, dissolution of a 1929 merger of Niagara Hudson's two holding companies and six operating companies.

Mr. LeBoeuf argued that sufficient direct evidence for the commission's purpose had been introduced. The commission, however, held that the statute that he cited was permissive and not mandatory, and that it had jurisdiction.

Oklahoma

FPC Denies Hearing

THE Federal Power Commission last month denied a petition of the Cities Service Gas Company of Bartlesville for a hearing of an FPC interim order directing the company to establish wholesale rates which would effect a $4,500,000 cut under 1941 operating revenues.

The order was issued last August and was to be effective September 1st. An FPC investigation which is still incomplete resulted in finding that the company's rates were excessive.

The company has obtained from the tenth district court of appeals in Denver a stay of the FPC order until October 29th. The court ruled that if schedules are filed at that time their provisions will be retroactive to September 1st. It was expected the company would seek a court order to review the entire case, a procedure which would probably effect another extension of the stay order.

Oregon

Utility Accuses Federal Agency

ORAL argument before the Securities and Exchange Commission on several reorganization plans for Portland Electric Power Company, under Chap. X of the Bankruptcy Act, developed recently into charges that the Bonneville Power Administration was trying

to "beat down" the value of the assets of Portland General Electric, in order to acquire it itself. Portland General Electric is a subsidiary of Portland Electric Power.

The charge, made by Ralph H. King, counsel for the independent trustees of Portland Electric Power, which has two plans up for consideration, after C. G. Davidson, counsel for Bonneville, urged the commission to examine carefully the company's earnings to determine how long they may continue in determining the capital structure for a reorganized company.

Mr. Davidson charged that Portland General Electric is making "excessive" profits on the energy purchased from the government through Bonneville, and called attention to testimony during the proceedings by Dr. Paul J. Raver, Bonneville Administrator, to the effect that a rate reduction of $1,000,000 by Portland General Electric was due. He also pointed out that Bonneville, which has a contract to furnish one-third of Portland General Electric's energy, actually was supplying more than 50 per cent.

Bonneville has been serving Portland General Electric under a 1-year contract signed in 1939.

Mr. King, in replying to the Bonneville attorney's charges, declared that the Bonneville Administrator "has had his eye on this property for some time, and still has."

Administrator Raver, at the conclusion of a congressional hearing in Portland last month, declared that privately owned utilities should not be permitted to stand in the way of a government-operated central power system in the Columbia river drainage area.

Dr. Raver urged that the dams be added to the existing Bonneville-Grand Coulee circuit to permit low-cost Federal hydroelectric power over the widest possible area.

Pennsylvania

Invests in Bonds

THE Pennsylvania Power & Light Company is participating in the United States Government Third War Loan campaign by buying $1,500,000 of government bonds. This purchase will be credited to the various counties in which the company serves on a *pro rata* basis.

The power company in making its purchase in this way seeks a fair distribution of the credit for the sale to territory it serves.

Texas

Negotiating Sale of Facilities

THE Engineers Public Service Company has contracted to sell its holdings of 99.9 per cent of the common stock of the El Paso Electric Company (Delaware) to the city of El Paso for $6,947,000, plus certain net current assets and adjustments to the date of closing, which may run close to $2,000,000, it was reported recently.

An election was scheduled to be held in El Paso on October 9th to vote on the transaction, which also is subject to approval of the directors of Engineers Public Service Company. It it anticipated that the contract will be closed December 1st if necessary approvals are given.

The El Paso (Delaware) concern is a holding company and owns all the common stock of El Paso Electric Company (Texas) and all capital stock of El Paso & Juarez Traction.

Utah

Defends Rate Cut

BECAUSE rates that produce such excess earnings as realized by the Utah Power & Light Company during 1942 and 1943 are "unreasonable," the state public service commission could perform its legal duty only by ordering them cut, George S. Ballif of Provo, commission chairman, declared recently in defending the action against charges of "severity" leveled on September 11th by George M. Gadsby, company president.

Rate reductions ordered by the state commission add to difficulties and cost of refinancing the Utah Power & Light Company and may wipe out payment of dividends to preferred stockholders, Mr. Gadsby asserted. He said the company could not have paid preferred stock dividends in the prewar period, when taxes and operating costs were lower, "if the rate reduction ordered by the commission had been in effect."

As ordered by the commission, an over-all reduction of $1,500,000 in rates charged by the company was scheduled to take effect October 1st. The commission subsequently postponed the effective date to October 15th to afford opportunity for a public hearing.

The Latest Utility Rulings

Reproduction Cost Excluded and War Taxes Allowed in Rate Case

THE Utah commission, in ordering an electric rate reduction, regarded evidence of reproduction cost as "unreliable, fanciful, unrealistic, unfair, unscientific, and inherently fallacious." The doctrine of fair value, the commission held, is not imbedded or in any way founded in the statutory law of the state.

Evidence as to trended or translated investment was also considered unreliable in fixing the rate base. The commission said:

> It is well known that labor and material prices have varied considerably during the past thirty years. A far more important and significant fact is that labor and material are more efficient and effective today than ever in the past. What weight should be given to a study which purports to reflect the change in the purchasing power of the utility construction dollar but which gives no consideration to such facts that today's dollar will construct a plant which produces a kilowatt hour of energy from one pound of coal instead of three pounds of coal? All that this theory indicates is that the older the plant is the more its value has appreciated, which is in conflict with the known facts regarding obsolescence and changes in the art of the industry.

Referring to its decision on property transfers in *Re* Utah Power & Light Co. (1943) 49 PUR(NS) 193, where it was concluded that there was no excess of system cost over original cost of a traction company to the Utah Company, the commission declared that a proposed "write-up" represented an allocation based on and supported by earning power of the electric business. There was involved an amount which the company claimed was paid by the system to gain control of an operating utility. The commission continued:

> By what process of reasoning can it be asserted that the ratepayers should be charged with return and depreciation on such an excess which represents capitalized earnings? Why should any ratepayer be penalized simply because a holding company desired "more than anything else" to gain control of an established, operating utility system? We are firmly convinced that any amount paid to gain control of an operating system, clearly identified as capitalized earnings, should not be included in the rate base.

A construction company profit was excluded as an intercompany profit "collected by a paper corporation formed merely to act as a billing device to extract fees from associated companies." Preferred stock expense was held to be inappropriate and improper in the rate base.

Either the compound interest or sinking-fund depreciation method, said the commission, may be used in rate making. The commission, after describing these methods, found that for rate-making purposes the sinking-fund depreciation method was fair and equitable when the sinking-fund interest rate is the same as the rate of return. It decided to use the 6 per cent sinking-fund depreciation method with an undepreciated prudent investment rate base because of its adaptability to rate making.

Allowance was made for *all* of the company's taxes, though the commission recognized that there are authorities who believe that some part of current abnormal war taxes should be borne by the utilities as their contribution to the war effort. Disallowance of a portion of tax expense, said the commission, would have the effect of reducing the rate of return allowed. The commission concluded that a rate of return of 6 per cent was fair and liberal.

Allowance was made for amortization of rate case expenses, representing ab-

normal operating costs, over a 10-year period. Annual depreciation expense was computed on cost of plant rather than fair value. A claim for excess profits taxes as part of the cost of service was rejected. *Public Service Commission v. Utah Power & Light Co. (Case No. 2612).*

Recapitalization on Earning Power Basis To Exclusion of Reproduction Cost

A PLAN submitted to the Securities and Exchange Commission by Southern Colorado Power Company for recapitalization, pursuant to § 11(e) of the Holding Company Act, was held to be entitled to approval if certain amendments should be filed. The present distribution of voting power among security holders was concededly repugnant to § 11(b)(2) of the act.

The commission saw no possibility that the income of the company would ever reach the amount necessary to pay the annual dividend requirements on Class A stock after paying interest and current preferred dividend requirements. Therefore, it ruled that no participation for Class B stock was justified. It did find a basis, however, for a 5 per cent participation by Class A stock, taking into consideration the fact that there is always a margin of error inherent in any estimate of earning power. Commissioner Healy, in a dissenting opinion, expressed the view that Class A stock should also be eliminated without participation.

Adhering to its position taken in other cases, the commission ruled that earning power is the basis for recapitalization. Evidence of reproduction cost was rejected with the statement:

> There was no error in the exclusion of the proffered reproduction cost evidence in the absence of any attempt to show the relevance of such evidence to the determination of earning power.
>
> In any event, we find it hard to believe that anyone would pay any attention for any purpose to the kind of estimate which was offered here. In that estimate an attempt was made to determine the reproduction cost as of April 30, 1937, of the very items of physical property which Southern Colorado now owns. But no one in his right mind would think of reproducing, either in 1937 or at the present time, the obsolescent, small, and inefficient generating units owned by Southern Colorado instead of erecting a modern generating plant or plants to produce power. Nor, we think, would anyone be likely to recreate the street railway system if starting afresh to furnish a transportation system; certainly he would not produce the tracks which Southern Colorado laid in a part of the city that never developed. It is difficult to see the significance of a cost-of-reproduction estimate which deals with the cost of reproducing facilities which no one would ever reproduce.

Projections into the future which assume that revenues in war time are likely to persist after the war and that at the same time taxes will return to the 1939 level were called unwarranted. The commission believed that substantial recognition must be given to the prewar level of operations as an indication of probable postwar levels. Moreover, it was said, the income resulting from prewar levels of operations must be adjusted for purposes of estimating postwar levels to reflect possible postwar levels of taxes.

Voting power, the commission held, cannot be equitably distributed merely by conferring it upon senior securities and leaving outstanding junior securities with little or no equity or voting power; voting power can be fairly and equitably distributed only by a recapitalization which will bring about a balanced capital structure. A plan which distributes voting power in proportion to stock interests, the commission held, does not provide for fair and equitable distribution of voting power unless the debt of the corporation is sufficiently protected so that creditors do not bear the speculative risk of the enterprise.

Accounting adjustments were held to be necessary because the corporate balance sheet contained an excess of book

cost over original cost of utility plant. Some of the property was termed obsolete and usable only as stand-by equipment. Part of the property had been retired without retirement of any portion of the excess.

Because the balance sheet carried a street railway property substantially at original cost with little or no retirement reserve applicable thereto, which property averaged approximately twenty years of age and operated at a loss after depreciation, the commission held that the property should be written down on the books to a figure representing its value on a liquidation-in-operation basis. *Re Southern Colorado Power Co. (File Nos. 54-55, 59-51, Release No. 4501).*

Suit to Test City Power to Acquire Assets Not Ground for Delaying Approval of Sale

An application by Southwestern Public Service Company and by a proposed purchaser of its property for approval of a transfer of assets was granted by the Securities and Exchange Commission over an objection by the city of Helena to immediate disposition of the proceeding. The city requested that a decision be deferred until such time as it might determine whether it wishes to purchase the physical properties underlying the securities involved and shall have obtained a judicial determination as to its power to issue revenue bonds in connection with such acquisition and shall have otherwise placed itself in a legal position to effect the acquisition.

The commission, referring to its ruling on a similar request in *Re* United Gas Improv. Co., Release No. 4384, June 28, 1943, found no justification for delaying decision on a transaction for which authorization was sought and which had already been formulated at considerable expense.

Mention was made of the risk of upsetting it and a consequent loss to the parties involved. Moreover, in the immediate case a tax loss to the investors of Southwestern would be involved if the sale were not consummated within the present fiscal year. *Re Southwestern Public Service Co. et al. (File No. 70-772, Release No. 4526).*

Manufacturing Company Furnishing Steam To Gas Utility Not a Public Utility

The New Hampshire Supreme Court ruled that Monadnock Mills, Inc., is not a public utility within the meaning of the statute relating to public utilities and therefore not subject to the jurisdiction of the commission. This ruling was made in a case in which the Claremont Gas Light Company sought to compel the manufacturing company to continue steam-heating service.

Steam had been furnished during certain periods, the last period beginning in 1935. Monadnock Mills had never solicited the sale of steam by advertisement or otherwise, and on several occasions had refused to furnish steam to a local laundry. It had never filed any rates or reports with the commission, nor had it sought or obtained any franchise to engage in business as a steam public utility.

Service to the public without discrimination, the court pointed out, is one of the distinguishing characteristics of a public utility. Except as modified by statute, it is the general rule that unless a person has publicly professed his readiness to perform a particular service, he is under no duty to render that service to all who request it.

The charter of Monadnock Mills does not authorize it to engage in the business of a public utility, nor does it confer the

power of eminent domain. The company does not operate any plant or equipment or any part of the same for the manufacture of gas for the public. The steam which it generates is furnished to the utility company, on which alone devolves the duty of public service.

A statutory provision relating to the generation, transmission, or sale of electricity ultimately sold to the public having reference to electricity only, said the court, is not to be inferentially extended to the other services subject to commission control. But even if it were so extended, it would not apply to this situation, since the steam which the company generates is not ultimately sold to the public and no gas is manufactured by it at all.

The circumstances of the case did not bear out a contention that the manufacturing company by "its participation in the manufacture of gas" dedicated its property to the public use. It furnished no gas after 1905, when it disposed of facilities used for that purpose. *Claremont Gas Light Co. v. Monadnock Mills, Inc. 32 A(2d) 823.*

Commission Has Jurisdiction over Rates For Service to City-owned Facilities

A DEMURRER and petition to dismiss a proceeding for the establishment of rates covering electric service to municipally owned facilities on bridges, viaducts, and highway projects in the city of Pittsburgh was denied by the Pennsylvania commission. The fundamental issue appeared to be whether or not a municipality is entitled to a lower rate for municipal lighting by reason of its ownership and maintenance of the lighting facilities.

The company, which had filed the demurrer and petition to dismiss, has on file rates covering municipal lighting service to certain municipally owned facilities. It was understood that the city asserted that the rates were unreasonable because they gave no credit for city ownership or maintenance. Determination of the issue of reasonableness of existing rates, the commission held, either in amount or application is a matter fully within the commission's jurisdiction. *City of Pittsburgh v. Duquesne Light Co. (Complaint Docket No. 13683).*

Cannot Convert Separate Local Services Into Through Service

A MOTOR carrier having certificates authorizing service between Denver and Akron and between Akron and Sterling was denied authority by the Colorado commission to transport freight between Denver and Sterling on the basis of through rates computed via the short route between those cities instead of the longer routes passing through Akron.

The applicant contended that his certificate constituted one line. The commission said that while not determinative of the question involved, it did not agree. It thought that the applicant was seeking to do indirectly, by establishing a through rate, what it could not do directly—that is, convert a local service operated under two separate certificates into a through service. The applicant was not endeavoring to establish a joint through rate.

The commission said:

> What he is trying to do is to institute a transportation service between Denver and Sterling by his own truck line which is in competition with duly certificated truck lines operating over the short route. He is attempting to establish a local route by his own lines by means of a through rate which is

merely another way of stating that he is proposing to combine the operations from Denver to Akron, and from Akron to Sterling by eliminating the terminal at Akron from both operations. In effect, he is attempting to change one of the termini of each of the existing certificates, and to convert two separate routes into one. Before an order can issue granting such through service, we must find that public convenience and necessity require it.

As to a statute requiring the establishment of through routes and reasonable rates, the commission said that were these two operating rights owned by separate owners, the statute might require the establishment of a through route, but that the section does not in any way require the establishment of a through rate. The word "through" was held to modify "routes," not "rates." *Re Woods Truck Line (Application No. 1436-AB et al. PUC No. 300, Decision No. 21234).*

FPC Orders Accounting Entries for Intercompany Profits

In a proceeding relating to a reclassification of accounts of the Utah Power & Light Company the Federal Power Commission ordered the exclusion from plant accounts of various items not acceptable as bona fide cost. Excesses of costs recorded on the books of the company over the bona fide cost to affiliated transferors were viewed as a write-up. The commission said:

> Here there was no exercise by the directors of Light Company of independent judgment. There were really no transactions and the pretended transfers were mere shams. In fact, it was no more than Bond and Share, through various controlled subsidiaries, dealing with itself. There did not exist two separate and independent parties, one endeavoring to obtain the lowest and the other the highest price for the properties, with each in a position to protect to the fullest its own interests. Obviously, such increases represent write-ups having no place in the plant accounts.

Re Utah Power & Light Co. (Opinion No. 99, Docket No. IT-5839).

Authority Not Required for Transportation By Dealer

An application for authority to operate motor vehicles as a common carrier for the transportation of coal was denied by the Pennsylvania commission on the ground that the applicant was not a public utility and therefore the commission had no jurisdiction. The evidence necessitated a conclusion that the applicant was a bona fide coal dealer who during the course of his business activity must carry coal.

The commission, describing the operations upon which this conclusion was based, said:

> The proof shows that the carriage of coal is integral and incidental to his business of buying and selling coal. The genuineness of his operations cannot be questioned because his unrefuted testimony shows that he owns and operates his truck for the purpose of hauling coal from collieries in certain counties to points in other certain counties. He purchases the coal at the mines in his own name and hauls it, for the purpose of resale, either to his customers or to a storage yard which he maintains at Green Lane, Pennsylvania. At this place he maintains a scale and place of business. He advertises the business and possesses a mercantile license. Usually, 20 to 30 tons of coal are stored in his coal yard.
>
> This business he has conducted for the past three years.

Re Downing (Application Docket No. 60987).

A similar ruling was made in another case where the applicant was hauling coal, sand, and gravel. In this case it appeared that upon receiving an order for coal from a customer the applicant drove his truck to the mines, made a cash pur-

chase of coal at the mines, and then carried it in his truck to his customer's bin. For this service he received a carrying charge in addition to the cost of the coal. He also bought sand and sold it to customers. The commission said he was, in fact, carrying his own property. Chairman Siggins and Commissioner Thorne dissented in the latter case. *Re Smith (Application Docket No. 61170).*

Other Important Rulings

THE Colorado commission denied a rehearing in Nightingale *v.* San Miguel Power Asso. (1943) 48 PUR(NS) 173, where it had held that a power association was a public utility, but modified its order dismissing the complaint. It held that the complaint should not have been dismissed in its entirety as the commission did make an affirmative finding on public utility status which, in effect, justified the filing of the complaint. *Nightingale v. San Miguel Power Asso. (Decision No. 21239, Case No. 4809).*

The Colorado commission held that a complaint of discriminatory discrepancy between carrier rates from different origins and to common destinations should be dismissed where none of the carriers involved could by its individual action eliminate the so-called discrimination by raising the rate from one origin, lowering the rate from another origin, or altering both rates, since no single carrier served both points and the record did not justify a lowering of one rate nor an increase in the other rate. *Smith (C. D.) Drug Co. v. Denver & R. G. W. R. Co. (Case No. 4904, Decision No. 21181).*

The Missouri commission, in authorizing the abandonment of a station agency, required the employment of a caretaker even though operation of the station by that method might result in a loss. This requirement was based on war needs. *Re Atchison, T. & S. F. R. Co. (Case No. 10,118).*

A Federal court held that the Interstate Commerce Commission has authority to authorize abandonment of an interurban electric passenger line operated as part of a general steam railroad system; that the fact that the line was electric and furnished only passenger service and could not run over the remaining tracks of the system did not preclude a showing that it was in fact operated as part of the general system coming within the jurisdiction of the commission; and that the fact that a railroad company is generally prosperous does not preclude abandonment of a losing branch line. *New York Public Service Commission et al v. United States et al. 50 F Supp 497.*

The Kansas City Court of Appeals held that where the Missouri commission had denied a certificate of convenience and necessity to operate a water system, granted a rehearing, and again denied the certificate, the circuit court could not review the order because no application for rehearing of the second order had been filed. The motion for rehearing after the first order, although sustained, did not relieve the applicant of the duty to move for a rehearing on the second order. *State ex rel. Southwest Water Co. v. Public Service Commission et al. 173 SW(2d) 113.*

Municipalities operating a utility may adopt ordinances making an owner of real estate liable for all charges for service and water supplied through connections installed or maintained on the premises of the owner, according to a ruling of the supreme court of Ohio. *Pfau v. City of Cincinnati, 50 NE(2d) 172.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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VOLUME 50 PUR(NS) NUMBER 1

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TITLES

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v.

Detroit Edison Company

[D-1722.]

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8. The cost of providing for a pension upon salaries or wages exceeding $3,000 a year should not, for rate-making purposes, be charged to operating expenses where a company establishes a noncontributory pension plan, but under this limitation a person receiving more than $3,000 a year may participate in the benefits of the plan only to the same extent as a person who receives not more than $3,000 a year, p. 4.

[July 17, 1943.]

PETITION *by city on behalf of citizens and ratepayers to investigate rates of electric company; dismissed. By order entered July 28, 1943, the Commission reserved jurisdiction to reopen the matter for the purpose of making retroactive the effect of any order which might be issued by the Commission because of any exemption from or reduction in Federal taxes for the year 1943.*

By the COMMISSION: On the 26th day of October, 1942, the city of Detroit filed with this Commission a petition asking for an order to show cause against the Detroit Edison Company. We elected to treat the petition of the city as though it were in fact two petitions.

So considered, the first petition was treated as one asking this Commission to fix a schedule of rates for the Detroit Edison Company to be applied during the months of November and December, 1942. The second petition was treated as one asking us to fix reasonable rates to be applied by the Detroit Edison Company as of the 26th day of October, 1942, and for the reasonably foreseeable future.

The first petition was dismissed by our order of December 4, 1942. In that order we expressly retained full authority to hear and dispose of the second petition. We now conclude that the second petition should likewise be dismissed.

[1] In reaching this conclusion, we have given full consideration to all the evidence produced at the hearings before us and to the contentions of the parties.

In its brief, the city of Detroit says:

"The extent of the rate reduction to which the ratepayers of the Detroit Edison Company are entitled, is contingent to a large extent upon the determination as to what constitutes a proper and just proportion of taxes imposed by the 77th Congress which should be included as operating expenses for rate-making purposes."

And, in its reply brief, the city of Detroit says:

"It is well recognized since 1923 that all normal and surtaxes or whatever the income tax may be called,

have been properly included as an operating expense and so determined by the courts."

Such statements postulate a power in this Commission to proportion taxes which it does not possess.

Under the Federal income tax law, any industry can avoid taxes by making less money. However, a free exercise of this alternative would unquestionably lessen industrial activity. In order to avoid any part of the income tax, it is necessary for the revenue producer to give up a part of its income.

[2-4] Under the laws of the state of Michigan, a regulated utility is entitled to earn a fair return upon the present value of the property devoted by it to public service. Money that has been lawfully spent in rendering service constitutes no part of such a return. The dollar paid out for taxes is no more available as income and return than a dollar spent for labor or any other legitimate expense.

We have repeatedly stressed the fact that we are a statutory body and possess only the powers conferred upon us by statute. We know of no statute giving us the power to forbid a company the right to charge as an operating expense any tax lawfully incurred by it. Likewise we know of no statute giving us the power to forbid such a company the right to so charge any part of the tax so incurred to operating expenses.

We therefore find that all taxes are a proper operating charge and they will be so considered in determining the income of the company in this case.

Such being our opinion in determining whether or not the earnings of the Detroit Edison Company are excessive, we consider such earnings as are available to the company after the payment of income taxes.

Analysis of petitioner's Exhibit 94 shows that its claims for an average rate base for the electric utility in 1942 are as follows:

Tangible plant investment	$318,719,000
Deduction for depreciation reserve	54,143,000
Net plant investment	$264,576,000
Working capital	7,000,000
Rate base	$271,576,000

The electric utility earnings for the year 1942 as shown by the annual report of the company are as follows:

Operating revenues		$74,317,410.35
Operating expenses	$32,410,267.12	
Depreciation	9,495,930.00	
Amortization of limited term utility investment	2,277.80	
Amortization of Utility plant acquisition adjustment account	124,954.75	
Provision for post war adjustment	480,000.00	
Taxes	19,160,692.11	
Total		61,674,121.78
Net operating revenue		$12,643,288.57
Adjustment		
Income tax accrual included in above	$11,550,000.00	
Actual 1942 income taxes	11,299,695.77	
Income tax adjustment		250,304.23
Adjusted net operating revenue		$12,893,592.80

This earning represents a rate of return of 4.75 per cent on a rate base recommended by the petitioner.

Some contention was made by the petitioner that the earnings in 1943 would be materially greater than in 1942. However, the company showed that its expenses would be increased over and above the amount indicated by its 1942 operations because of the

Federal government's requirement that it change from the 40-hour week to a 48-hour week with time and one-half pay for the extra eight hours; and because of the inauguration of a formal pension plan by the company. It is also recognized that the corporate income tax rates have not been definitely determined for 1943, and that the company's net tangible plant investment will probably increase somewhat. When this has all been taken into consideration there does not appear to be any reason to believe that the rate of return in 1943 will be any greater than in 1942, even when calculated on the basis of 1942 income tax rates.

[5] It is recognized that in 1942 and in the estimate of expenses for 1943, the Edison Company has made large appropriations to depreciation reserve and a postwar adjustment reserve. An alternate policy would be the reduction of rates to a point that would prevent the accumulation of such reserves. Under such a policy the financial ability of utility companies to meet the reconstruction problems that will follow the war would be in constant doubt. The ratepayers in many instances would find themselves in the position of enjoying unwarranted low rates at a time when they are most able to pay, and high rates in a subsequent period when they may be least able to pay. Such a condition is not consistent with good regulation, nor should it be permitted.

[6] If the annual revenue of the company be computed upon the basis of a return of 5 per cent, the rate base would be the sum of $260,000,000 or less than City Exhibit 94. We find that the present fair value of the properties of the Detroit Edison Company, used and useful in its business as an electrical utility, is greater than the sum of $260,000,000.

We find that rates for electrical service by the Detroit Edison Company are reasonable rates.

[7] Also involved in these proceedings are two other questions. One relates to the plant of the Detroit Edison Company used by it to supply steam heat to the public. The other relates to the pension plan of the company.

The steam-heating system and the electrical system of the Detroit Edison Company are not physically interdependent one upon the other; and we are of the opinion that for the future they should be treated as separate and distinct utilities.

[8] The proposed pension plan of the Detroit Edison Company is a noncontributory plan under which the entire cost will be charged to operating expenses. We do not believe that, for rate-making purposes, the cost of providing for a pension upon salaries or wages exceeding $3,000 per year should be so charged to operating expenses. Under this limitation, a person receiving more than $3,000 per year in wages or salaries may participate in the benefits of the pension plan, but only to the same extent as a person who receives not more than $3,000 per year. The estimate of 1943 earnings referred to in this order has been made on this basis.

The petition of the city is dismissed.

INDIANA PUBLIC SERVICE COMMISSION

Re Eastern Indiana Gas Company

[No. 15381.]

Expenses, § 9 — Ascertainment — Burden of proof.

1. The burden falls on a public utility company petitioning for an increase in rates to justify all charges as revealed by its books, p. 9.

Return, § 101 — Natural gas company.

2. A return of 5½ per cent was approved in the case of a natural gas company in the light of the return to similar businesses similarly situated together with the prevailing interest rate on borrowed capital and economic conditions generally, p. 11.

Rates, § 131 — Reasonableness — Adequacy of service — Temporary rate.

3. An increased rate for natural gas, awarded on the basis of a property valuation contemplating an adequate quantity of gas with sufficient pressure at all times under a promotional rate setup, should be temporary and dependent upon the company obtaining a sufficient supply of gas so that there will be an adequate supply under sufficient pressure throughout the system, where the evidence indicates inadequacy of supply, p. 12.

Expenses, § 4 — Powers of Commission — Federal taxes.

4. The Commission has no power to include in operating expenses only normal Federal taxes, as of a prewar year, without allowing Federal taxes in excess of the level of that year, p. 12.

Return, § 16 — Right to earn.

5. The duty rests upon the Commission to grant to all public utilities a reasonable return upon the present value of their property, p. 12.

Expenses, § 109 — Increased amounts during war — Taxes.

6. Increased taxes during a war period, as well as all other legitimate operating expenses, form no part of the reasonable return to public utilities and must be allowed as an operating expense, p. 12.

Rates, § 181.1 — Inflationary effect during war — General level of rates.

7. An increase in a gas rate during war is not inflationary when it is still lower than the general gas rate level of the state; unless a rate increase raises the general price level for the commodity or service involved, inflation will not result, p. 13.

(BEAMER, Chairman, concurs in separate opinion.)

[August 10, 1943.]

PETITION *for increase in natural gas rates; increased rates granted.*

APPEARANCES: For petitioner, Paul R. Benson, Attorney, New Castle, Samuel L. Trabue, Attorney, Rushville; for the city of Rushville and the

Rushville Junior Chamber of Commerce, W. B. Keaton, Rushville; for the Director of Economic Stabilization and the Administrator of the Office of Price Administration, as intervener, George J. Burke, General Counsel, Harry R. Booth, Utilities Counsel, by Howard S. Guttmann, Attorney, Washington, D. C.; for the public, Howard T. Batman, Public Counsellor, Indianapolis.

STUCKEY, Commissioner: On the 4th day of September, 1941, Eastern Indiana Gas Company filed its verified petition with the Public Service Commission of Indiana requesting, among other things, an order determining and fixing a schedule of rates which will be just and reasonable and will yield petitioner a just, adequate, and compensatory return upon the fair value of the property of petitioner devoted to public service.

Thereafter, investigations were made by the accounting and engineering staffs of the Commission, and, pursuant to notice as is required by law, public hearing was held in the circuit court room of the city of Rushville, Rush county, Indiana, at 10 A.M., Monday, May 3, 1943, and concluded on May 4, 1943, with appearances as above noted.

Thereafter, pursuant to an agreement of the parties, an order was entered in this cause July 7, 1943, which reopened the proceeding for further hearing in the rooms of the Commission, 401 State House, Indianapolis, Indiana, at 10 A.M., Friday, July 9, 1943, for the purpose of receiving in evidence an adjusted income account exhibit of petitioner for the year 1942. Further hearing was held at that time, place, and hour and said exhibit, introduced by Howard T. Batman, public counsellor, was received in evidence. At this hearing there appeared for petitioner Samuel L. Trabue, Attorney, and Harry Boggs, Accountant.

At the opening of the hearing, May 3rd, Prentiss M. Brown, as Administrator of the Office of Price Administration, by and through Howard S. Guttmann, attorney, filed a motion to be made a party to this proceeding. The motion was sustained and Howard S. Guttmann, representing the Office of Price Administration, participated in the first day of the hearing only.

The evidence shows that petitioner was organized under the 1929 Indiana General Corporation Act in 1931. At that time old Eastern Indiana Gas Company, Central Fuel Company, and Rushville Natural Gas Company were merged into Eastern Indiana Gas Company, the petitioner herein. At the time of the merger, petitioner issued to those companies a total of 4,985.65 shares of its common capital stock on the following basis:

To Old Eastern Indiana Gas Company, 1,377 shares at $100 par value	$137,700
To Central Fuel Company, 2,241.25 shares at $100 par value	224,125
To Rushville Natural Gas Company, 1,367.4 shares at $100 par value	136,740

making a total common stock capitalization of $498,565.

The evidence also shows that there are no bonds or preferred stock.

The following exhibits were introduced and admitted into evidence: [List omitted].

The evidence further shows that petitioner relies principally upon its

Exhibit Nos. 10 and 11 which were introduced and admitted into evidence. Exhibit No. 10 depicts the income accounts of petitioner for the years 1941 and 1942 and Exhibit No. 11 purports to show the deficiency in earnings under present rates on P. S. C. I. engineers' estimated original cost of utility plant depreciated; also estimated increase in revenues necessary to pay a fair return. The exhibits are as follows:

Exhibit No. 10

Eastern Indiana Gas Co., New Castle, Indiana
Income Accounts as per P. S. C. I. Audit (Columns "A" and "B" Lines 1 to 25) Adjusted in Column "C"

Line No.		A Year 1941	B Year 1942	C Adjusted Year
1	Operating revenues	$73,712.75	$77,992.45	$77,992.45
2	Miscellaneous revenues	943.25	618.08	618.08
3	Total operating revenues	$74,656.00	$78,610.53	$78,610.53
4	*Operating Expenses*			
5	Production	$13,490.96	$13,665.86	$13,665.86
6	Distribution	6,468.00	7,101.78	7,101.78
7	Commercial	3,960.76	4,620.82	4,620.82
8	General and administrative	15,126.48	16,004.44	16,004.44
9	Undistributed	5,998.08	4,606.48	4,606.48
10	Increased labor costs	.....	.....	1,609.87
11	Total Operating Expenses	$45,044.28	$45,999.38	$47,609.25
12	Taxes—general	5,465.00	5,818.25	5,818.25
13	Depreciation	3,140.23	5,824.72	.....
14	Depreciation per P.S.C.I. engineers	.....	.....	21,408.00
15	Bad debt expense	600.00	.....	.....
16	Over and short account	12.49	(13.76)	(13.76)
17	Total Operating Expenses	$54,262.00	$57,628.59	$74,821.74
18	Net operating revenues	$20,394.00	$20,981.94	$3,788.79
19	*Nonoperating Revenues*			
20	Merchandise sales	($102.69)	$172.83	$172.83
21	Sale old ditching machine	.....	5,000.00	.....
22	Rent of house	.....	488.68	488.68
24	Total nonoperating revenues	($102.69)	$5,661.51	$661.51
25	Gross income—per P.S.C.I. audit	$20,291.31	$26,643.45	.....
26	Gross income—adjusted	.....	.....	$4,450.30

Note: Taxes of $5,818.25 for 1942 does not include any Federal income tax.
Note: Parentheses denote red figures.

INDIANA PUBLIC SERVICE COMMISSION

Exhibit No. 11

Eastern Indiana Gas Co., New Castle, Indiana

Showing Deficiency in Earnings under Present Rates on P.S.C.I. Engineers Estimated Original Cost of Utility Plant—Depreciated—Also Estimated Increase in Revenues Necessary to Pay a Fair Return

Line No.			
1	Total estimated original cost of utility plant as of December 1, 1942, as determined by the engineering department of Public Service Commission of Indiana		$868,158.00
2	Reduced by estimated depreciation reserve requirement		453,446.00
3	Net utility plant—per P.S.C.I. engineers		$414,712.00
4	*Plus*		
5	Materials and supplies—estimated		2,400.00
6	Cash working capital—estimated as follows:		
7	Operating expenses 1942 (P.S.C.I. audit)	$45,999.38	
8	Taxes (P.S.C.I. audit)	5,818.25	
9	Total expenses exclusive of depreciation	$51,817.63	
10	1/12 of $51,817.63	$4,318.14	
11	1/2 of $4,318.14	2,159.07	
12	Cash working capital (45 days)		6,477.21
13	Total rate base (on above basis)		$423,589.21
14	*Deficiency in Earnings under Present Rates*		
15	1942 gross income per P.S.C.I. audit adjusted to reflect a normal gross income under present rates (See Exhibit *10* Line 26)		$4,450.30
16	Per cent of return under present rates		1.05

Line No.	*Estimated Increase in Revenue Necessary to Pay the Following Per Cents of Return*	5%	5½%	6%	6½%
18	Gross income required to pay a return on $423,589.21	$21,179.46	$23,297.41	$25,415.35	$27,533.03
19	1942 gross income under present rates as adjusted (See Exhibit *10* Line 26)	4,450.30	4,450.30	4,450.30	4,450.30
20	Deficiency under present rates	$16,729.16	$18,847.11	$20,965.05	$23,083.00
21	Present net rate per 1,000 cubic feet	$1.05	$1.05	$1.05	$1.05
22	Necessary increase per 1,000 cubic feet	.24	.27	.30	.33
23	Total rate necessary to provide a fair return	$1.29	$1.32	$1.35	$1.38
24	Increase in rates (Line 22) should produce additional revenue—(69,998,200 cubic feet sold in 1942 x increase in rate)	$16,799.57	$18,899.51	$20,999.46	$23,099.41

The said public counsellor's Exhibit No. 2, made by the accounting department, is as follows:

Eastern Indiana Gas Co., New Castle, Indiana
Adjusted Income Account—1942

	Per Books 1942	Adjustments	After Adjustments 1942
Operating revenues	$77,992.45		$77,992.45
Miscellaneous revenues	618.08		618.08
Total operating revenues	$78,610.53		$78,610.53
Operating expenses			
Production	$13,665.86	($3,245.53)	$10,420.33
Distribution	7,101.78	(4,851.89)	2,249.89
Commercial	4,620.82		4,620.82
General and miscellaneous	16,004.44		16,004.44
Undistributed expense	4,606.48	(1,449.34)	3,157.14
Total above items	$45,999.38	($9,546.76)	$36,452.62
General taxes	5,818.25		5,818.25
Depreciation and depletion	5,824.72	15,342.28	21,167.00
Bad debt expense	.....	.....	.....
Over and short	(13.76)		(13.76)
Total operating expenses	$57,628.59	$5,795.52	$63,424.11
Net operating revenues	$20,981.94	($5,795.52)	$15,186.42
Nonoperating income			
Merchandise sales	172.83		172.83
Other	5,488.68	(5,000.00)	488.68
Gross income	$26,643.45	($10,795.52)	$15,847.93

Note: Parentheses denote red figures.

This adjustment was made because it would appear from the company's books that it had charged to operating expense items which should have been charged to depreciation for the year 1942, since the Commission is allowing an annual expense to depreciation, which for 1942 amounts to $21,167, as compared to the depreciation as charged by petitioner of $5,824.72. Those charges, in detail, as taken from the books of the company by the Commission's accounting department are as follows, to wit:

Production Expense	
Labor for maintenance of gas holder	$300.16
Material and supplies on hand	218.76
Labor on collecting mains	265.95
Materials used on collecting mains	220.64
Labor in abandoning wells	1,228.79
Material in abandoning wells	942.83
Distribution System	
Service lines, meters, mains, and labor	3,024.41
Material	1,827.48
Undistributed Expense	
Replacements of automotive equipment	750.42
Machinery	767.32
	$9,546.76

[1] Allen Fisk, chief accountant

of the Commission, testified that the adjustments, as shown by public counsellor's Exhibit No. 2, covered items which were of a replacement character, and, therefore, should be charged to the depreciation account instead of operating expense. He admitted that it would not be possible for him to prove definitely that that was true since the books did not give sufficient information. He further testified that if petitioner had kept its books in conformity with the Uniform System of Accounts, as adopted and prescribed by this Commission, which he advised petitioner to follow about a year before the hearing in this matter, that it could have been accurately determined whether those items represented replacements or operating expense. Conversely, the petitioner cannot prove that they represent replacement items or operating expense. Nevertheless, the burden falls on petitioner to justify all charges as revealed by is books. It is reasonable to assume, however, that by the very nature of the items as shown that they constitute replacements. Under those adjustments, the 1942 gross income (after the payment of all just operating expenses as included in the exhibits) is $15,847.93. But in order to predict with any degree of certainty what the operating expenses will be for 1943, and thereafter, other items of expense, not shown by any exhibit, but revealed by the evidence of record, are as follows: The total rate case expense is $5,000, which amortized over a period of five years would add $1,000 to operating expenses; for property added to the plant account since the engineering department concluded its study, the depreciation thereon, figured at the rate arrived at by the engineering department, would amount to about $350. While petitioner's Exhibit No. 10 shows increased labor costs for 1942 of $1,609.87, the evidence shows that this item is short by $1,300; that a reasonable estimate for Federal taxes is $5,000, making a total of $7,650 for additional operating expenses to be deducted from the adjusted gross income of $15,847.93, which would fix the gross income at approximately $8,197.93, as compared to $4,450.30 as claimed by petitioner.

The evidence further shows that petitioner has adopted the original cost depreciated, as determined by the engineering department of this Commission, as the rate base and value for rate-making purposes in this case. Adding materials and supplies and working cash capital in the total amount of $7,700, which items are based on the adjusted 1942 income, makes a total figure of $422,412, as compared to $423,589.21 claimed by petitioner.

The evidence further shows that in the city of Rushville, especially in cold weather, usually around mealtime, gas pressure sinks to the point where gas fails to flow to the burners. No better description of this condition of service can be given than to quote from the order of this Commission in Causes 10294, 10295, etc., which was approved March 13, 1931, PUR 1931D 92, 94, 95, after hearing on a petition for an increase of rates. This order was introduced and admitted into evidence as petitioner's Exhibit No. 9. On page 3 of the order there is this statement: "Pressure charts

were submitted by the petitioners and the respondent to indicate the gas pressure during certain hours of certain days." On page 4, the order states: "The respondents in these causes placed some witnesses on the stand to testify with respect to the quality of service which these subscribers of these companies were receiving. Some evidence was offered to show that some trouble had been experienced in getting sufficient gas at certain places within the town. The greater part of the evidence with respect to the scant supply of gas centered around certain particular cold days when the mercury stood below zero. In many cases, where complaints were made to the company about service, the evidence showed that it was due to imperfection in the consumer's service line or his equipment." On the same page, here is another statement of the evidence: "The respondent in this cause raised the question of the supply of gas, and indicated that it was the respondent's belief that there was not at all times an adequate supply. The preponderance of evidence, however, discloses that since the holder had been constructed, that there is an adequate supply and that the gauge on said holder has indicated the same regularly."

In the instant case, witnesses for the company and dissatisfied customers gave substantially the same testimony as that given in 1931. It is indeed significant that in a period of twelve years the same condition exists, and there is evidence in this cause which shows that petitioners has lost customers because of the poor service which they received.

[2] The Commission, having considered the evidence of record, arguments, and statements of counsel and the briefs filed herein, finds that petitioner is a public utility within the scope of the Public Service Commission Act, authorized to engage, and engaged, in the sale and distribution of natural gas to the public, obtained from 150 gas wells, to approximately 3,521 customers, residing in towns and cities and rural communities in the counties of Rush, Henry, Hancock, Hamilton, and Madison in the state of Indiana; that petitioner is a going concern, with business attached, and that the value of the used and useful property of petitioner devoted to the public service for rate-making purposes is, in round numbers, the original cost depreciated, as adopted by petitioner, not in excess of $424,000. That upon this rate base, and at present rates for gas, petitioner would earn on the basis of the 1942 adjusted and projected income a rate of return of 1.933 per cent; that in the light of the return to similar businesses similarly situated, together with the prevailing interest rate on borrowed capital and economic conditions generally, petitioner should be permitted to earn 5½ per cent as a fair and just rate of return; that upon this basis petitioner's earnings are and will be deficient under present rates in the amount of $15,120 annually; that in order for petitioner to enjoy a return of 5½ per cent on the said rate base, it is necessary to fix a rate for gas to consumers that will yield a gross revenue, after all proper deductions shall have been made, of $23,320. To raise this amount of revenue, based on the consumption of

gas as shown on Exhibit No. 11 of 69,988,200 cubic feet, would require a rate of $1.27 per thousand cubic feet.

[3] The above rate base of $424,000 contemplates that petitioner's plant is, or will be, able to supply an adequate quantity of gas with sufficient pressure at all times under a promotional rate setup. But unless the company obtains such additional supply of gas satisfactory service can not be rendered to the public and, in that event, the value of petitioner's used and useful property for rate-making purposes would be set by the Commission at a figure substantially less than $424,000.

The Commission believes and finds, however, that said rate should be approved only as a temporary one, as hereinafter provided by this order. And, further, that petitioner should be required to obtain an additional supply of gas from the nearest interstate pipe-line company, or any other available practicable source, so that there shall be an adequate supply of gas under sufficient pressure throughout petitioner's system available to its customers for all their domestic, commercial, and industrial needs, regardless of the season of the year, time of day, or temperature conditions.

Then, when petitioner shall have made avaliable such adequate supply of gas, the Commission will, after being furnished with consumer sales data for 1942 and eleven months of 1943, compose and order a promotional group of step rates to be charged by petitioner to yield a reasonable rate of return upon said rate base.

A single rate to all classes of consumers alike, as a rule, goes with a gas utility with a limited or inadequate supply of gas. Where the supply is insufficient to meet all the needs of the customers, obviously a promotional rate conducive to the more varied and greater volume use of gas would defeat its own ends and hasten in each instance the failure of service.

[4–6] At this time it would appear to be proper for the Commission to present its opinion and argument on the subject of the allowance of Federal taxes as charges to operating expense, since the parties of record by their briefs have done so. The O. P. A., in substance, to begin with, takes the position, as we understand it, that only normal Federal taxes, as of the year 1939, should be allowed as a proper charge against operating expense, and that all Federal taxes in excess of the 1939 level should be denied as a charge against operating expense. The Commission is unable to understand by what law it would be empowered to make such a decision. The Uniform System of Accounts does not contemplate it, neither does the Public Service Commission Act permit it.

There are some Commission decisions dating back to World War No. 1 wherein only the normal Federal taxes were allowed as a charge against operating expense, while all taxes directly attributable to the war were not included as such. Even so, it would appear that such action was illegal. However, in that period, utilities were being permitted to earn and were earning a rate of return of 8 per cent, and even greatly in excess thereof, in comparison now to 4½ per cent to 6 per cent. They were paying, likewise, high rates for borrowed money,

usually 7 per cent and greater. A gradual decline in interest rates has been noticeable since 1934. It is common knowledge that since 1937 public utilities in this state have engaged in substantial refinancing of their high interest obligations contracted back in the days of World War No. 1. This has been accomplished at rates ranging from 4 per cent down to 3⅛ per cent. Principally through this source of obtaining cheap money have the well-operated utilities in Indiana been able to make substantial rate reductions to their customers. To put in practice the tax theory expounded by the intervener, what would probably happen? The first reaction, no doubt, would be an increase in the cost of money to all public utilities. This would then cut off any further refinancing or refunding programs. It would tend to stifle necessary extensions and betterments to utility properties and result in a curbing of service to the public. In the wake of this undesirable trend, there would no doubt come also an impairment in the service rendered by utilities. The most feasible recourse for relief open to them would be through rate increases. It is true, of course, that Federal taxes may be the cause of forcing utilties, in some instances, to ask for rate increases in situations where Federal taxes, coupled with all other taxes, force a reasonable rate of return to a rate that is confiscatory. This condition might be avoided through amortization of Federal taxes over a reasonable period.

The duty rests upon this Commission to grant to all public utilities within the state of Indiana a reasonable return upon the present value of their property. All legitimate operating expenses, of which taxes, regardless of their nature, are a part, form no part of this reasonable return to public utilities. They are in the same category as costs for labor, materials, and supplies. If we draw the line on taxes, then it logically follows that we must draw the line, likewise, on all other items of expense which utilities must pay in order to operate. Therefore, in that case, all increase in expenses for materials, supplies, and labor incurred because of the war would have to be denied as a part of the just charges against operating expense and considered as a part of the utilities' reasonable return. If that were done only harm could result to all parties involved.

The Commission is mindful of the fact that in the final analysis the utility patrons, on the one hand, and the stockholders and owners of the utility securities, on the other hand, pay the greatest price for mismanagement and unsound regulation; the customers will either suffer curtailment, if not deprivation, of service, or pay an excessive price for it; the owners of the securities and the capital stock will either sustain substantial shrinkage of their investments or experience the loss of most, if not all, of those investments in bankruptcy proceedings.

[7] Concerning the question of inflation, the Commission fails to see wherein the increased rate as granted could possibly cause inflation. This rate is still lower than the general gas rate level of this state, and it is our contention that unless a rate increase raises the general price level for the commodity or service involved that

inflation will not result. Re Greenfield Gas Co. (Ind 1942) Cause No. 15574, 45 PUR(NS) 101.

The Commission further finds that it should retain jurisdiction over the parties and the subject matter herein pending the time when petitioner shall have obtained an extra supply of gas and a promotional rate shall have become effective—all to the end that the welfare of the company shall be promoted and the public interest best served.

It is therefore *ordered* by the Public Service Commission of Indiana that Eastern Indiana Gas Company, petitioner herein, shall establish and make effective the rate of $1.27 per thousand cubic feet of 1,000 BTU natural gas as a temporary rate, to be effective and chargeable to the customers of petitioner September 1, 1943; that said temporary rate herein determined, established, and approved shall be the rate and charge for gas service rendered by petitioner to its customers unless and until otherwise ordered by this Commission, and petitioner is hereby ordered to file with the tariff department of this Commission, in accordance with the rules thereof governing the composition and filing of rate schedules, on or before August 15, 1943, the aforesaid temporary rate which shall be effective on all regular bills rendered by petitioner on and after September 1, 1943; provided, however, that if petitioner, for any reason whatsoever, shall fail or refuse to obtain for its gas system an additional supply of gas, as hereinbelow ordered, by December 1, 1943, then, in that event:

(1) The several prayers, and each of them, of the petition herein shall stand denied, and

(2) The said temporary rate shall thereupon automatically terminate and concurrently therewith the present rate of $1.05 per thousand cubic feet shall automatically be the rate to be charged by petitioner for 1,000 BTU natural gas to its customers on all bills rendered on and after December 1, 1943, and, further,

(3) Petitioner shall refile said $1.05 rate schedule with this Commission on or before December 15, 1943.

It is *further ordered* that any rate or rates of petitioner for gas service in conflict with the said rate established by this order be, and the same hereby are, canceled as of September 1, 1943.

It is *further ordered* that the Commission hold this cause open and retain jurisdiction of the subject matter thereof, and the parties thereto, pending further investigation, hearing, and order.

It is *further ordered* that petitioner be, and it hereby is, required to obtain, on or before December 1, 1943, an additional supply of gas from the nearest interstate pipe-line company, or any other available practicable source, which, supplemented by the petitioner's supply produced by its gas wells, shall be sufficient in pressure and volume to meet the needs of petitioner's domestic, commercial, and industrial customers so that satisfactory service will be rendered at all times.

It is *further ordered* that petitioner shall pay into the treasury of the state of Indiana, through the secretary of this Commission, the following costs, to wit:

Commission's accounting services ..	$739.43
Commission's engineering services ..	2,104.87
Expense to the Commission for giving notice by publication of hearing herein	4.54
Total	$2,848.84

It is *further ordered* that petitioner be, and it hereby is, permitted and authorized to amortize the instant rate case expense of $5,000 out of its revenues, chargeable to operating expense, over a period of five years, at the rate of $1,000 annually.

It is *further ordered* that petitioner be, and it hereby is, required to adopt the Uniform System of Accounts for Class "D" gas utilities as prescribed in 1936, and as since revised, by the National Association of Railroad and Utilities Commissioners, and, further, petitioner shall set up its books in compliance with the provisions of said system, in so far as the same may be or become applicable, on or before September 1, 1943, and shall thereafter continue to keep said books, with the supervision of the accounting department of, and the approval by, this Commission.

BEAMER, Chairman, concurring: I concur in the order of Commissioner Stuckey but cannot agree with his reasoning on the matter of Federal income taxes. Before discussing this matter, however, I wish to say that I agree that a rate increase will be of no value to this company unless they obtain an additional supply of gas. The evidence definitely shows that they have a diminishing supply which, at times, is now insufficient to supply existing customers. This results in poor service. To charge an additional rate for the same kind of service which the company is now and has been furnishing its customers would only result in a loss of customers and consequently a diminishing revenue. Therefore, my concurrence in the rate increase is contingent upon the company obtaining an additional supply of gas with which to supplement its present supply in order that it may render adequate service to its customers and take on additional customers if the demand for service arises.

As stated before, I cannot agree with my colleague's reasoning on the question of allowing all of the Federal income taxes at the present wartime rate as an operating expense. We are all aware of the fact that this country is engaged in a terrific struggle upon the outcome of which depends the continued existence of our form of government and our existing economy. The cost of such a struggle is tremendous and taxes to the utmost our entire economic structure. It is necessary that every individual and every business enterprise bear its just proportion of this cost. To finance a portion of this tremendous cost, the Federal government has, since 1940, greatly increased the tax rate on both corporations and individuals. These higher taxes have the secondary objective of curbing inflation by taking up part of the abnormally large amount of money which would otherwise be available for use in bidding for the constantly diminishing supply of civilian goods. In addition, the Federal government has put into effect a price control program for the purpose of stopping inflation. The degree of success of this program need not be discussed here because this Commission has allowed in this case all increased labor costs and the in-

creased costs of operation. To grant all this and at the same time grant utilities the right to earn a normal rate of return after allowing them to collect as operating expenses all taxes, including war taxes, would permit them to escape payment of any of the costs of the war. Certainly utilities have as much as stake in the war as any other business or individual and should be required to pay their fair share of the costs. Furthermore, to permit a utility to pass war taxes on to its customers, places a double war burden upon the utility patron, his own and that of the utility.

I find no provisions in the statutes of Indiana which would compel this Commission to allow all taxes, including war taxes, as operating expense in fixing utility returns. True, the Uniform System of Accounts, adopted by this Commission, contemplates that all taxes should be allowed as operating expenses. This system of accounts was adopted for normal times. These are not normal times. This system of accounts was adopted by an order of this Commission and can be changed by order of this Commission. However, I do not believe this to be necessary.

I purview the question involved here not to be so much a question of allowing or disallowing these war taxes as it is a question of what constitutes a fair rate of return under present conditions. It is true that our Indiana law imposes upon this Commission the duty of granting to a utility a fair return upon the fair value of its property. A fair rate of return changes with changing circumstances. My colleague has pointed out the change in interest rates on borrowed capital over the period of the past twenty years. There has been a decline during the same period of the rate of return for utilities but the decline, generally, has not been as great as the decline in interest rates on borrowed money. Six per cent has sometimes been considered a reasonable return on utility property. However, under these wartime conditions, utility returns, like other returns, will probably be reduced by about the amount which they are required to contribute toward the cost of the war. This may reduce the fair rate of return to 4½ to 5½ per cent. To attempt to maintain the same prewar rate of return in the case of all of our utilities, under present conditions, would inevitably result in uncontrolled inflation. For example, let us take a salaried employee who made net $5,000 before the higher income tax rate was imposed. By the increase in Federal income taxes, his net earnings have been decreased about $600. If he insists that his earnings are to be maintained at $5,000 net to him, then his wages must be raised $600 to take care of this additional tax charge. But out of this amount, the government takes another 20 per cent of $60 so that much more must be added out of which is taken another 20 per cent or $12, and so on. Thus starts a spiral of inflation which would soon be uncontrollable. The same formula would apply if we attempted to pass on to the consumer all war taxes in an attempt to maintain the former rate of return for utilities.

For these reasons, I cannot concur with my colleague upon the allowance of all taxes, including war taxes, as operating expenses. I think it should also be noted that Congress in passing the latest Income Tax Act, granted special relief to utilities by providing that dividends paid on preferred stock are deductible in computing surtax net income. No other business was granted this relief.

However, in the instant case, only $5,000 has been allowed in operating expenses for Federal income tax purposes. This amount will certainly not pay the excess profit tax and will, at best, only pay a portion of the increase over the 1940 rate. The rate of return provided for only contemplates a net return of 5½ per cent. Should the amount allowed in operating expenses for war taxes be deducted, it would make the return exceed 6 per cent. Therefore, I can and do concur in the conclusion arrived at by Commissioner Stuckey in his order even though I do not agree with his opinion upon the question of Federal income taxes.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Earnings during War Emergency

Return, § 49 — War emergency — Policy of Commission — Dividends and salaries — Rates.

A declaration of policy as to earnings during a war emergency was adopted, stressing the importance of utilities maintaining a strong financial position, the inadvisability of instituting formal rate investigations in view of the artificial economic situation created by war conditions, and the necessity of coöperation by utilities in refraining from payment of higher dividends or owners' salaries.

(BUCHANAN, Commissioner, dissents.)

[June 7, 1943.]

DECLARATION *of policy as to earnings of public utilities during war emergency.*

By the COMMISSION: *To All Public Utilities Subject to The Jurisdiction of This Commission:* The 1942 earnings of many public utilities have shown a sharp rise over those of preceding years, without there having been a corresponding rise in capital investment. There can be no doubt that the chief causes of this phenomenon are the larger demand for utility services by industry, occasioned by the war, the limitations and restrictions placed upon utility capital investments by the government and the in-

direct effect which heightened industrial activity has upon the spending practices of various consumer groups.

Whether or not this increase in earnings has resulted in an unreasonable return to any particular utility is determinable only after full consideration of that utility's affairs. The Commission takes cognizance of the fact that the increased demands of the war and the limitations and restrictions imposed by the government to expedite the war program, has produced an artificial economic situation, which renders difficult an adjudication of rates which would be fair and reasonable both in the present war emergency and the ensuing postwar period, giving due consideration to the interests of consumers, the investors, the tax authorities and the utilities.

The Commission takes cognizance of the increased speed and continuous use of equipment now required to meet demands for service; the departure from maintenance routine occasioned by such continuous use, as well as by the scarcity of maintenance personnel and materials; and, in some instances, the installation of equipment of a character or capacity which is suitable for wartime needs, but which may not be used or useful in the public service when peace-time operation is resumed.

The Commission expects the public utilities under its jurisdiction to offset these wartime costs against the wartime revenues they are producing, to the end that depreciation now being suffered, and maintenance now being deferred, shall not be offered as arguments in support of postwar rate increases, or to prevent, when otherwise warranted, postwar rate reductions. The Commission now advises the public utilities subject to its jurisdiction that it will scrutinize every such argument in the light of the equipment operating records, the charges to depreciation and maintenance, and the operating income, for the period through which we are now passing.

The Commission is also aware of the fact that many wartime inventions have peace-time applications, and thereby speed the obsolescence of prewar devices; and that to provide the newest equipment and the most modern service, the public utility industry may require huge quantities of cash when the war is ended.

All of these factors point to a provident and cautious course in disposing of abnormal earnings. They indicate that the payment of abnormally large dividends, or of excessive salaries of partners and individual owners, may be ultimately injurious, not only to the recipients, but to the public service as well.

The Commission therefore issues the following declaration of policy:

(a) That it is imperative that public utilities maintain a strong financial position throughout the war emergency, to the end that they may render prompt and uninterrupted service during said emergency and that they may enter the postwar period prepared to promptly take up the matter of deferred maintenance and the rehabilitation of their properties.

(b) That the Commission deems it inadvisable to institute formal investigations into the reasonableness of existing rates which appear to be producing increased earnings as the re-

sult of an artificial economic situation created by war conditions.

(c) That the Commission invites the coöperation of all public utilities in refraining from the payment of dividends or owners' salaries materially higher than similar payments in peace time to the end that cash may be conserved to adequately meet postwar conditions; but that without such coöperation the only alternative left to the Commission is to institute an investigation into the rates, depreciation and maintenance practices and other related affairs of any public utility showing abnormal earnings.

Commissioner Buchanan files a dissenting opinion.

BUCHANAN, Commissioner, dissenting: The policy purports to deal with two things: One, deferred maintenance due to scarcity of materials and labor; two, freezing of cash for purposes of modernization of plant following the war.

The alleged reason for the statement is the *inability* of this Commission to "adjudicate rates which would be fair and reasonable both in the present war emergency and the ensuing postwar period, giving due consideration to the interests of (1) consumers, (2) the investors, (3) tax authorities, and (4) the utilities." With such an admission there should be three resignations from the Commission.

My primary answer to that reason is that the basic contributors today to all public utility earnings are, first, either directly or indirectly the Federal government and, secondly, residential customers. Federal Power Commission statistics for February, 1943, show electrical consumption of industrial and residential customers to be 85 per cent of the total. Industrial consumption is almost 100 per cent war connected and therefore a Federal charge. Secondarily, I reply ad seriatim.

First, there is no necessity for adjudicating the fairness and reasonableness of rates for any period other than the present. To drag in "the ensuing postwar period" is to tax one's imagination beyond the breaking point and to drag a red herring across the trail. The problem and duty that confronts this Commission *now* is to determine whether a utility is earning *today* more than a reasonable return on the cost of its plant. This the majority, by the "Statement of Policy," is refusing to do to the detriment of the "consumer" (principally the Federal government and residential customers) that they assert they wish to consider. If the return to the utility is reasonable it is none of our business what disposition is made of the money.

Secondly, the majority considers the "investor." There lies the real basis of the "Statement," for what they actually propose to do here *is to freeze excess cash contributions from consumers* collected at the present "boom" time for purposes of additions and betterments to plant after the war *without giving such "contributions to capital" credit as such.* In other words, the majority proposes that the admittedly excessive charges of today upon consumers (principally the Federal government and residential customers) shall be segregated so that new plant can be purchased after the war and *thereby avoid further contribution from investors.* That is

"having the cake and eating it too"—for the investors.

Third, they consider "tax authorities." By that they refer *only* to the Federal government. Nobody denies that the great increases in revenues experienced by all public utilities and by private industry, where private industry still functions, are directly due to the war effort and, therefore, are direct charges against the government. In other words the excessive utility profits are due to war demands upon industry. Starting with this fact, the majority argues to the effect that if excess charges go "sky high," the government will profit through excess profits taxes apparently forgetting that the government contributes 100 per cent by way of rates and gets back only 90 per cent by way of taxes on such excess profits. Under that system, the books won't balance for the government but they will balance favorably for the utility at the expense of the government. With that picture, such a "Statement of Policy" is completely unsound. Excess profit taxes consume 90 cents out of every dollar of excess profits. Therefore, a public utility that maintains a high excess profits earning does so to the extent of 10 per cent penalty on the government.

Fourth, as to the interest of public utilities, my experience supported by the record in every jurisdiction, Federal or state, where public utilities are concerned is that they need no protection except *against themselves.* The evils existing in the public utility world, which were the common target of the Public Utility Holding Company Act and amendments to the Federal Power Act of the Roosevelt administration and the strengthening of our own regulatory law in Pennsylvania in 1937, did not result from what the public or government or the customer had done to public utilities but they existed because of *what the public utilities had done* to themselves, to the consumers and the public in general. The evils did not reflect the operating point of view (which is almost invariably good) but the *financing,* the playing with dollars, which this present "policy" promotes. So, I repeat that the utilities adequately take care of themselves where dollars are concerned and need no "policy" suggestions. Rather the need is *active restraint*—an application of rate-making practice which is the primary reason for the existence of this Commission.

The majority next takes "cognizance of the increased speed and continuous use of equipment, . . . the departure from maintenance routine, . . . as well as the scarcity of maintenance personnel and materials and in some instances . . . equipment . . . suitable (only) for wartime needs. . . ."

It is true that use of equipment is at a higher tempo today than in 1939 but the effect of that is to reflect greater efficiency upon the investment and less replacement because of obsolescence. It is much more beneficial to both consumer and investor to be required to replace equipment because of *use* than because it has become *outmoded* through idleness and lapse of time.

It is likewise true that equipment is more difficult to maintain today than in 1939 because of the scarcity of materials and to some extent of

personnel, but in a study of public utilities under the jurisdiction of this Commission and in other jurisdictions, both Federal and state, I have come to the conclusion that those operators who are "on their toes" and are really "enterprising" in a practical, not a political, sense, can get the materials necessary to proper maintenance, and, those who have maintained proper wage and living standards for their labor have no difficulty with their personnel. So the old rule applies today as it did yesterday and will tomorrow that "the early bird gets the worm." In other words, the fellow that sits continuously in the mourner's seat is going to watch the rest of the world pass by and continue to complain about it.

As for equipment "suitable only for wartime needs," Defense Plants Corporation and similar Federal war agencies have established methods of handling such "ersatz" equipment by reducing its normal service life to an arbitrary and much smaller life expectancy within which such property must be fully depreciated. The public utilities are cognizant of this fact and don't have to be told concerning it, in my opinion. All that is necessary is *a check-up today* to see that it is being done and *not tomorrow* to find out why it had not been done. Furthermore, there is no such thing as deferred maintenance as suggested by the majority. The principal effect of the war upon public utility plant is a more rapid loss of service life which can adequately be taken care of under the Uniform Systems of Accounts for electric utilities adopted by the Federal Power Commission on May 11, 1937, by this Commission, effective January 1, 1938, and by the vast majority of other state regulatory bodies. We have adopted similar systems for other utilities. Hence there is no need for the majority's suggestion that deferred maintenance accounts be established.

Our sole jurisdiction in this matter falls directly under three heads. First, the authority to require a system of accounting. This has been done in most cases and those systems are reasonably adequate to meet the wartime emergency and postwar conditions in the matter of accelerated depreciation with proper supervision. Second, our jurisdiction applies under the heading of rates, they must be fair and reasonable. That is the *imminent* question today and the majority by its "Statement of Policy" inviting "coöperation" implies knowledge of excess earnings of all public utilities over and above a fair and reasonable return and then announces an intention of postponing action thereon. I believe the postponement of action where excess earnings are present is a violation of the law and of our duty to the commonwealth and nation. Third, there is a matter of refunds or reparations. The majority asserts "without such coöperation the only alternative to the Commission is to institute an investigation into the rates, depreciation and maintenance practices and other related affairs of any public utility showing abnormal earnings." In refusing to perform that duty, we threaten to do tomorrow what the law requires to be done today and apparently without appreciation of the fact that tomorrow's action cannot rectify today's wrong as a matter of law.

In a recent decision (Cheltenham & A. Sewerage Co. v. Public Utility Commission [1942] 344 Pa 366, 43 PUR(NS) 477, 25 A(2d) 334, construing § 313 of the Public Utility Law of 1937), Mr. Justice Parker held that reparations or refunds to consumers are only payable by public utilities from the date of the Commission's order finding the rates unreasonable. This interpretation of the Parker opinion was the basis for the recent Commission action of June 1, 1943, in Ramsey and Utility Consumers League of York v. Edison Light & P. Co. C. 11576, — PUR (NS) —. Under this decision I cannot understand how a threat of a *future* rate case after the war would scare anybody, particularly a seasoned public utility presently earning excessive and unreasonable rates. The Commission could not restore the excessive earnings in any event.

The Federal government has been striving for a stabilization of prices affecting living costs and for a reduction of the cost of war upon the government through renegotiation of contracts and similar matters. Even now a head-on clash between the government on the one hand and a labor group on the other has been the subject of great public support of the government's position and there is an exact parallel between the demands of John L. Lewis and the statement of policy of this Commission. Both are inflationary. For governmental action contra inflation see "Profits," *Time,* issue of June 7, 1943, p. 88.

In furtherance of such economy, Executive Order 9328 dated April 8, 1943, of President Roosevelt, specifically announced the necessity of reducing public utility rates and charges as one of the economic goals of wartime. As the President expressed it, it was a "hold the line order against inflation" and before the ink has barely dried on that order of the Commander-in-Chief, the second most populous state in the Union by a governmental act apparently repudiates it. It seems impossible of belief.

The whole theory behind the statement of policy as announced by the majority is wrong, as I see it, and may result in a gigantic tax-dodging proposition. If the policy issued by governmental (Commission) mandate, is carried out by all public utilities, it is not only possible but probable that claims for exemption from Federal excess profits taxes would be made under § 722 of the Internal Revenue Act of 1942. Certainly this Commission should not lend itself in the slightest way to any tax dodging scheme.

This subject has been a matter of debate in almost every jurisdiction. The invariable solutions to the problem have been, first, *to watch* annual depreciation charges to see that they shall be adequate under the increased tempo of war; second, to maintain the rate-making functions, but to shorten the procedure, for purposes of speedier decision. Louisiana Pub. Service Commission v. United Gas Pipe Line Co. (Fed PC 1943) Dockets G–133, 148, 193, 157, Opinion No. 90, 48 PUR(NS) 91; Re Minneapolis Street R. Co. (Minn. 1943) File No. A–5972, 48 PUR(NS) 294. Similar rulings were made in Re St. Paul City R. Co. (Minn 1943) File No. A–5971.

To argue that *cash* is necessary for

replacement of equipment *after the war;* or that it should be accumulated from *excessive charges against consumers,* particularly the Federal government, for such purposes or that rates cannot be presently and fairly reduced because of abnormal conditions, is absurd.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Haverhill Electric Company

[D.P.U. 7046.]

Appeal and review, § 84 — Appeal to Commission — Municipal permit for wires.

1. Any aggrieved party has an appeal from an order of a city council authorizing the installation, erection, and maintenance of an electric line across a public street of a city, where an electric company is engaged in the manufacture or sale of electricity in the city, p. 25.

Appeal and review, § 84 — Appeals to Commission — Parties.

2. A company engaged in the manufacture or sale of electricity in a city is an interested party entitled to appeal from an order granting a permit to lay electric wires across a street, p. 26.

Franchises, § 30 — Permit for electric wires — Absence of restriction to private use.

3. An order of a municipal council permitting an industrial company to lay electric wires under a city street, but not limiting the facilities to the supply of electricity for private use, is invalid where a company is engaged in the manufacture or sale of electricity in the city, p. 26.

Evidence, § 11 — Burden of proof — Intention of permittee to resell electricity.

4. The burden of proof is not on an electric utility company to prove an intention on the part of an industrial company to resell electricity to the public, in appealing from a municipal order granting a permit to the industrial company to lay wires across a public street, when the order affords the opportunity to make such sale to a considerable territory while it might have been forbidden by an express restriction, p. 28.

Waiver and estoppel — Objection to electric wires — Previous resale to tenants.

5. Previous sales by an industrial company to tenants with the consent of an electric utility company do not prove a waiver by the electric company of its right to object to the granting of a location in the public streets to the industrial company for the laying of wires without restriction to private use, p. 28.

Franchises, § 30 — Permit for electric wires — Resale of electricity by industrial company.

6. The granting by a municipal council of an order permitting an industrial company to lay electric wires across a public street in a city where a company manufactures and sells electricity would not promote the public interest when such authorization is not restricted to private use and there

is evidence showing the intention of the industrial company to use the proposed line for transmitting electricity to be distributed and sold at least to its tenants, there being no evidence that the utility company has not been adequately serving the territory or that the industrial company and its tenants could not obtain adequate service at reasonable cost from that company, p. 28.

[June 29, 1943.]

APPEAL *from order of city council granting petition for installation, erection, and maintenance of an electric line across a city street; appeal sustained and order granting permit annulled.*

APPEARANCES: Damon E. Hall, for the appellant; Fred H. Magison, City Solicitor, for city of Haverhill; John J. Ryan, for L. H. Hamel Leather Company.

By the DEPARTMENT: This appeal was heard on May 10, 1943, and on May 20, 1943, briefs were filed by the parties. The case arose upon a request of L. H. Hamel Leather Company to the municipal council of the city of Haverhill for a permit, and related in part to a steam line, which is not subject to the present appeal. So much of the request as relates to the present appeal reads as follows:

"Also the L. H. Hamel Leather Company respectfully requests that a permit be granted to it to install, erect, and maintain a 550-volt electric line along the top of said conduit between the points above described and which are more fully set forth and shown on the plan hereto annexed.

The War Department has already granted written permission to the company to install the steam and electric lines which are the subject of this application.

A hearing was held by the municipal council on March 1, 1943. At the hearing the Haverhill Electric Company appeared and objected to so much of the request as related to an electric line. On March 9, 1943, the council met and its action is recorded as follows:

"*Hearing.* 'Document 86, petition of the L. H. Hamel Leather Company for permission to lay steam pipes and electric wires under Locust street. Granted. Yeas 5, nays 0. Bernard H. Donahue, City Clerk.' "

This order obviously referred to the request, which included Locke street as well as Locust street, and the entire conduit location, which passes through other lands of the city.

The municipal council of the city of Haverhill is the successor of its aldermen referred to in General Laws, Chap. 164, §§ 87, 88 and General Laws, Chap. 166, § 22 and also has the powers of selectmen under General Laws, Chap. 166, § 24. (See 1908, Chap. 574, § 19. General Laws, Chap. 4, § 7, Definition of "aldermen." General Laws, Chap. 39, § 1.)

The city claims that the foregoing action was taken under General Laws, Chap. 166, § 24, as appearing in the Tercentenary Edition, which reads as follows:

Section 24. The selectmen may, upon terms and conditions prescribed

by them, and subject to the provisions of this chapter, so far as applicable, authorize a person to construct for private use upon, along, and under the public ways of the town telegraph and telephone lines and lines for the transmission of electricity for light, heat, or power. Upon the construction of any such line, the poles and structures thereof within the location of such ways shall become the property of the town, and the selectmen may regulate and control the same, may at any time require the persons using the same to make alterations in the location or construction thereof and may, after notice and a hearing, order the removal thereof. The town may at any time attach wires for its own use to such poles and structures, and the selectmen may permit other persons to attach wires for their private use thereto or to poles and structures constructed by the town, and may prescribe reasonable terms and conditions therefor. Whoever unlawfully injures or destroys any wire, pole, structure, or fixture of any such line shall be punished by a fine of not more than $500 or by imprisonment for not more than two years, or both.

The L. H. Hamel Leather Company and the Haverhill Electric Company, appellant, claim that the action of the municipal council was taken under General Laws, Chap. 164, § 87, as appearing in the Tercentenary Edition, which reads as follows:

Section 87. In a town where a person is engaged in the manufacture or sale of electricity, no other person shall lay, erect, maintain, or use, over or under the streets, lanes, and highways of such town, any wires for the transmission of electricity except wires used by street railway companies for heat or power, without the consent of the aldermen or selectmen granted after notice to all parties interested and a public hearing.

The Haverhill Electric Company also contends that its appeal was properly taken under General Laws, Chap. 164, § 88, as appearing in the Tercentenary Edition, which reads as follows:

Section 88. Any person aggrieved by the decision of the aldermen or selectmen, under either of the two preceding sections, may, within thirty days after notice of said decision, appeal therefrom to the Department, which shall thereupon give due notice and hear all parties interested, and its decision shall be final.

The city further claims that, the action having been taken under General Laws, Chap. 166, § 24 and there being no provision for appeal in Chap. 166, the Haverhill Electric Company had no right of appeal and the matter was improperly before this Department.

[1] General Laws, Chap. 166, § 22 is too long to be quoted in full. It authorizes a petition by an electric light or power company for the construction of a line for the transmission of electricity upon, along, under, or across a public way. No appeal lies from the decision of the board of aldermen or selectmen, upon such a petition, if there is no municipal lighting plant or electric light or power company or other person having the right to lay electric lines upon, along, under or across the public ways of the city. The same is true in the case of a petition for private use under General Laws, Chap. 166, § 24. Where,

however, a person, including an electric light or power company, is engaged in the manufacture or sale of electricity in a city or town, General Laws, Chap. 164, §§ 87 and 88 prevent the granting of a permit to any other person to lay wires over or under the public ways except after a hearing, and with the right of appeal by any aggrieved person to the Department. In other words, the right of the local board to grant the permit is given by General Laws, Chap. 166, § 22 or § 24, as the case may be; but the right of public hearing, before the aldermen or selectmen, and appeal to the Department, where an existing manufacturer or seller of electricity is in operation, is secured by General Laws, Chap. 164, §§ 87 and 88.

The foregoing interpretation gives validity to every one of the sections cited, in accordance with the well-known principle that the body of the statute law is to be construed as a whole and weight is to be given to all parts of it, so far as practicable. We see no inconsistency between General Laws, Chap. 166, §§ 22 and 24 and General Laws, Chap. 164, §§ 87 and 88. Construing all four sections together, we are of the opinion that any aggrieved party has an appeal under General Laws, Chap. 164, § 88 from an order originating under General Laws, Chap. 166, § 22 or under General Laws, Chap. 166, § 24, and granted after a hearing under General Laws, Chap. 164, § 87.

[2] The fact that General Laws, Chap. 164, §§ 87 and 88 provide for a hearing and appeal only where a person is engaged in the manufacture or sale of electricity in the city or town is a strong indication that such person is an interested party, and entitled to appeal after appearing in opposition to the petition. This is in accordance with the public policy underlying our gas and electric laws as outlined in Attorney General v. Walworth Light & P. Co. (1893) 157 Mass 86, 87, 88, 31 NE 482, and Weld v. Gas & Electric Light Comrs. (1908) 197 Mass 556, 558, 84 NE 101. Accordingly, we find and rule that the Haverhill Electric Company is an aggrieved party and that the appeal is properly taken.

[3] There is nothing in the petition or the order of the municipal council to indicate that the location granted was limited to the supply of electricity for private use. It may be, as contended by the city, that said location can have legal effect only as the location of an electric line for private use, it being granted to a private business corporation, which has no authority under its articles of incorporation to transmit electricity for sale, or to sell electricity. It does not follow, however, that the order granting the location was intended to be an order under General Laws, Chap. 166, § 24, restricted to private use. There is nothing in the original request of the L. H. Hamel Leather Company for a permit, the subsequent proceedings of the municipal council, or the order itself, to indicate that any restriction to private use was intended, or that the order was granted under General Laws, Chap. 166, § 24. These proceedings are all set forth in the appeal of the Haverhill Electric Company, on file in this case, and, as so set forth, are herein incorporated by reference. The order is at best ambiguous. We are unable to find that it is

a valid order under General Laws, Chap. 166, § 24.

It appeared that the purpose of installing this line was to resell electricity, obtained from the Haverhill Electric Company, to tenants of L. H. Hamel Leather Company.

It also appeared that it would be possible for said leather company, if it obtained the right to cross the public ways with an electric line as requested, and was able to obtain the electricity, to sell electricity to a large number of persons, including both its tenants and members of the general public, without crossing another public way.

The case seems to us to be somewhat similar to a former decision of the Board of Gas and Electric Light Commissioners, a predecessor of this Department.

That case arose in Haverhill and is known as the Haverhill Appeal (1908) 23 Ann Rep Mass G & E L C 20.

In that case one Charles H. Hayes, an individual residing in Haverhill, was the owner of the majority of the stock of a corporation which manufactured electricity and supplied electricity for lighting to certain buildings, and did a business of about $2,000 per year from the sale of electricity for lighting purposes. He sought authority to construct over or under Main and Washington streets an electric light and power line. This authority was granted by the board of aldermen of the city of Haverhill. An appeal was taken by the Haverhill Electric Company. On appeal, the Board of Gas and Electric Light Commissioners sustained the appeal and annulled the order of the board of aldermen. The Board said at pages 23 and 24:

"No restrictions were imposed by the aldermen upon the exercise of their grant. It is open to grave doubt whether restrictions stipulating that the lines are to be used for the supply of certain customers or within a certain prescribed territory only, if imposed, would be valid or effectual. Neither has this Board the authority to modify or in any way restrict the order upon which the appeal is based. The appeal must be sustained or dismissed, and the order affirmed or annulled, without qualification. An order might have been adopted with a valid restriction that the lines should be for private use only; but this is not the order, and doubtless no such order was desired."

In the absence of any decision of the supreme judicial court to the contrary, we regard this decision of the Board of Gas and Electric Light Commissioners as a valuable precedent for the assistance of this Department. Although in that case it appeared that the appellee intended to manufacture his own electricity, while the present appellee seeks to buy it from the appellant, we do not consider that this makes any difference in principle. The definition of "electric company" in General Laws, Chap. 164, § 1, includes a corporation distributing and selling electricity, as well as one manufacturing and selling electricity.

Although under its existing articles of incorporation it would seem to be ultra vires for the L. H. Hamel Leather Company to resell electricity to its tenants, the evidence is that it has done so heretofore. If the appeal be not sustained, said company is likely to

carry out its expressed intention to make such resale, irrespective of the limitations in its articles of incorporation. In fact, we are somewhat impressed by the fears of the Haverhill Electric Company that the proposed line, if authorized without express restriction, may be used to serve members of the public in addition to the tenants of the L. H. Hamel Leather Company.

[4] We are of opinion that the burden of proof is not on the Haverhill Electric Company to prove an intention on the part of the leather company to resell to the public. The order of the municipal council affords the opportunity to make such sale to a considerable territory, when this might have been forbidden by an express restriction. This was a ground for sustaining the appeal, in the decision of the Board of Gas and Electric Light Commissioners above cited.

[5] There was evidence that previous sales to tenants have been made with the consent of the Haverhill Electric Company, but we are of opinion that this consent did not amount to a waiver by said company of its right to object to the granting of a location in the public streets to the leather company.

[6] In the absence of express restriction, and with the evidence showing the intention of L. H. Hamel Company to use the proposed line for transmitting electricity to be distributed and sold, at least to its tenants, we find that, as a practical matter, the granting of the order in its existing form would incite further controversy, and would not promote the public interest. There was no evidence that the Haverhill Electric Company has not been adequately serving the territory of the city of Haverhill, or that the L. H. Hamel Leather Company and its tenants could not obtain adequate service at reasonable cost from that company. No such contention was even made. Therefore, we are compelled, in the exercise of sound discretion, to reverse the action of the municipal council.

The city of Haverhill filed a document entitled "Requests for Rulings," containing six requests which are herein incorporated by reference. As to these we rule as follows:

1. Denied. We are unable to determine, upon the evidence, that the order was intended to be granted for the transmission of electricity for private use only.

2. Denied.

3. Denied. There is a right of appeal under General Laws, Chap. 164, § 88, in any city or town where a person other than the applicant is engaged in the manufacture or sale of electricity.

4. Granted.

5. Granted, if the vote states that it is taken under General Laws, Chap. 166, § 24, because that is another way of stating that the permit is granted for private use.

6. Denied, as being too broad in its language. A petition or vote might be so worded as to be self-contradictory.

The L. H. Hamel Leather Company filed a letter containing nine requests for rulings, which are herein incorporated by reference. As to these we rule as follows:

1. Granted, on the understanding that General Laws, Chap. 164, § 88 also applies.

2. Granted.
3. Granted.
4. Granted, on the understanding that the discretion of the Department on appeal under § 88 supersedes the discretion of the aldermen.
5. Denied as immaterial.
6. Denied. The matter comes before the Department for its consideration anew.
7. Denied.
8. Denied as immaterial upon the facts found.
9. Denied.

Therefore, after due notice, public hearing, investigation, and consideration, it is

Ordered: That the appeal of the Haverhill Electric Company be and the same hereby is sustained and the order, dated March 9, 1943, of the municipal council of the city of Haverhill, constituting its board of aldermen, in so far as it grants to L. H. Hamel Leather Company permission to lay electric wires under public ways in said Haverhill, be and the same hereby is annulled.

UNITED STATES SUPREME COURT

John W. Noble, Doing Business as Noble Transit Company

v.

United States of America et al.

[No. 511.]

(— US —, 87 L ed —, 63 S Ct 950.)

Certificates of convenience and necessity, § 62 — Prescriptive rights — Motor Carrier Act.

One whose operation as a contract carrier by motor vehicle, on the effective date of the Federal Motor Carrier Act, was in the service of a particular type or class of shippers for whom he transported goods of a miscellaneous character is not entitled under the "grandfather clause" of the act to a permit entitling him to haul the same items in the specified territorial limits for anyone who may choose to employ him.

[May 3, 1943.]

UNITED STATES SUPREME COURT

APPEAL from judgment dismissing complaint to review restrictive provisions of an order of the Interstate Commerce Commission granting a permit to operate as a contract motor carrier; affirmed.

APPEARANCES: Charles A. Lethert, of St. Paul, Minnesota, and C. D. Todd, Jr., of Washington, D. C., argued the cause for appellant; Allen Crenshaw, of Washington, D. C., argued the cause for appellee United States of America and Interstate Commerce Commission; Franklin R. Overmyer, of Chicago, Illinois, argued the cause for appellees Regular Common Carrier Conference, etc.

Mr. Justice DOUGLAS delivered the opinion of the court: This is an appeal [1] from the judgment of a 3-judge court ([1942] 45 F Supp 793) which dismissed a complaint filed by appellant to review and annul certain restrictive provisions of an order of the Interstate Commerce Commission [1941] 28 MCC 653), granting appellant a permit to operate as a contract carrier by motor vehicle under the Motor Carrier Act of [August 9] 1935 (49 Stat 543, Chap. 498, 49 USCA § 301, 10A FCA title 49, § 301), now designated as Part II of the Interstate Commerce Act. [September 18, 1940.] 54 Stat 919, Chap. 722.

Appellant filed an application for a permit as a contract carrier under the "grandfather" clause of § 209 (a) of the act, 49 USCA § 309(a), 10A FCA title 49, § 309(a). That section provides that if the contract carrier or his predecessor in interest "was in bona fide operation as a contract carrier by motor vehicle on July 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time," he shall be granted a permit without more. And § 209 (b) provides that the Commission "shall specify in the permit the business of the contract carrier covered thereby and the scope thereof." [2]

The Commission found that appellant was not a common carrier of general commodities but a contract carrier [3] of specified commodities. It found in that connection that on and after July 1, 1935, appellant had been "in bona fide operation as a contract carrier" by motor vehicle "under individual contracts" with persons who "operate food canneries or meat-packing businesses, (a) of canned foods from Blue Island, Ill., to St. Paul, South St. Paul, Minneapolis, and Minnesota Transfer, Minn., and (b) of fresh meats, canned foods, dairy products, and packing-house products

[1] Sections 210 and 238 of that Judicial Code, 28 USCA § 47a, § 345, 7 FCA title 28, § 47a, 8 FCA title 28, § 345.

[2] Section 209(b) also provides that the Commission shall attach certain terms, conditions and limitations to the permit. It goes on to state, however, that those conditions shall not "restrict the right of the carrier to substitute or add contracts within the scope of the permit, or to add to his or its equipment and facilities, within the scope of the permit, as the development of the business and the demands of the public may require."

[3] The term "contract carrier" is defined by § 203(a)(15), 49 USCA § 303(15), 10A FCA title 49, § 303(15) as "any person which, under individual contracts or agreements," engages in the transportation by motor vehicle of "passengers or property in interstate or foreign commerce for compensation."

and supplies, from South St. Paul to Grand Forks, N. Dak., Chicago and Rockford, Ill., and points in that portion of Wisconsin on and east of the Mississippi river from the intersection of the Wisconsin-Illinois-Iowa state lines near Dubuque, Iowa, to La Crosse, Wis., and U. S. Highway 53 from La Crosse to Cameron, Wis., and on and south of U. S. Highway 8, and (c) of the commodities described in (b) from Chicago to St. Paul, Minneapolis, South St. Paul, Winona, and Rochester, Minn., and La Crosse, Wis., over irregular routes;" 28 MCC at p. 660. The Commission accordingly found that appellant was entitled to a permit authorizing "the continuance of such operations."

Appellant's chief objection to that limitation of his rights under the "grandfather" clause is that the Commission has restricted the shippers or types of shippers for whom he may haul the specified commodities. His argument comes down to this: once the territory which he may serve and the commodities which he may haul have been determined, he should be allowed to haul these commodities for any one he chooses within those territorial limits. In the present case appellant hauled under contract miscellaneous supplies for Swift & Co. such as glue, paper, barrels, soap, bolts, thermometers, etc. His argument accordingly is that he should be allowed to haul the same items for any other person in the territory, whatever may be the business of that person and irrespective of the fact that appellant had never had any contract of carriage with him.

The Commission at one time seems to have followed that view. Re Longshore Contract Carrier (1937) 2 MCC 480, 481. But it no longer does. Re Keystone Transp. Co. (1939) 19 MCC 475. In the latter case the power and duty of the Commission under § 209(b) to specify in the permit "the business of the contract carrier covered thereby and the scope thereof" were reëxamined. It was held that that phrase meant "more than just the business of being a contract carrier within a defined territory. It is all-inclusive and connotes in addition to the business of being a contract carrier the exact and precise character of the service to be rendered by such carrier." 19 MCC 493.

We agree. An accurate description of the "business" of a particular contract carrier and the "scope" of the enterprise may require more than a statement of the territory served and the commodities hauled. An accurate definition frequently can be made only in terms of the type or class of shippers served. Unless the words of the act are given that interpretation, permits under the "grandfather" clause may greatly distort the prior activities of the carrier. He who was in substance a highly specialized carrier for a select few would be treated as a carrier of general commodities for all comers, merely because he had carried a wide variety of articles. That would make a basic alteration in the characteristics of the enterprise of the contract carrier—a change as fundamental as we thought was effected by a disregard of the nature and scope of the holding out of the common carrier in United States v.

Carolina Freight Carriers Corp. (1942) 315 US 475, 86 L ed 971, 43 PUR(NS) 423, 62 S Ct 722. If the business of the contract carrier were not defined in terms of the type or class of shippers served, that "substantial parity between future operations and prior bona fide operations" which is contemplated by the act (Alton R. Co. v United States [1942] 315 US 15, 22, 86 L ed 586, 595, 62 S Ct 432) would be frequently disregarded. The "grandfather" clause would be utilized not to preserve the position which the carrier had obtained in the nation's transportation system, but to enlarge and expand the business beyond the pattern which it had acquired prior to July 1, 1935. The result in the present case would be a conversion for all practical purposes of this contract carrier into a common carrier—a step which would tend to nullify a distinction which Congress has preserved throughout the act. If such a metamorphosis is to be effected or if the appellant is to obtain a permit broader than the actual scope of his established business, the showing required by other provisions of the act must be made. See § 206(a), § 207, and § 209(b), 49 USCA §§ 306(a), 307, 309(b), 10A FCA §§ 306(a), 307, 309(b).

Since the Commission did not apply an incorrect standard in defining the nature of appellant's business and its scope,[4] our function is at an end. The precise delineation of an enterprise which seeks the protection of the "grandfather" clause has been reserved for the Commission. United States v. Maher (1939) 307 US 148, 83 L ed 1162, 28 PUR(NS) 95, 59 S Ct 768; Alton R. Co. v. United States, *supra;* United States v. Carolina Freight Carriers Corp. *supra.*

We have considered the other objections raised by the appellant and find them without merit.

Affirmed.

Mr. Justice Murphy took no part in the consideration or decision of this case.

[4] We do not accede to the suggestion that the permit specification clause in § 209(b) is applicable only to new operators, not to "grandfather" applicants. The Commission has consistently taken the view that it covers both. Re Motor Convoy (1937) 2 MCC 197, 200; Re Wray Wible (1938) 7 MCC 165, 168; Re Hunter (1938) 13 MCC 109, 112, 113; Re Marine Trucking Co. (1939) 17 MCC 615. That interpretation is entitled to "great weight." United States v. American Trucking Associations (1940) 310 US 534, 549, 84 L ed 1345, 1354, 35 PUR(NS) 486, 60 S Ct 1059. It is consistent with the wording of § 209. Paragraph (a) requires a contract carrier to have a "permit" in order to operate as such; and it requires the Commission to issue the permit "without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b)" within the prescribed time limitation.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Washington Gas Light Company

v.

James F. Byrnes, Director of Economic Stabilization et al.

[Nos. 8501–8504.]

(— US App DC —, — F(2d) —.)

Rates, § 649 — Notice to government agency — Increase during war.

1. A Commission order of October 13, 1942 (46 PUR(NS) 1) authorizing an increase in rates complied with the Act of October 2, 1942 amending the Emergency Price Control Act of 1942 to require notice to the President or his representative and consent to intervention in rate proceedings when a rate increase is proposed, where the case was subsequently reopened and the Price Administrator was notified and had an opportunity to be heard in the reopened proceeding and where the amendatory act brought no substantial change in the parties to the proceeding, since the Administrator of the Office of Price Administration who was designated to represent the Director of Economic Stabilization, after the passage of the amendatory act, had been in the proceeding from the beginning and was represented both before and after the passage of the amendment by the same attorney, p. 38.

Appeal and review, § 53 — Judicial decree — Absence of Commission record on appeal — Grounds for reversal.

2. A judgment reversing an order granting a rate increase should not be reversed on the ground that the judge did not have the Commission record of the case physically before him at the time of his decision, where the material parts of the record were brought to the attention of the judge at the time of the hearing and before his decision was rendered, and where it appeared that he had made a close examination of the record when a motion to reconsider the decision was before him and he had found nothing therein to alter the opinion which he had already reached, p. 38.

Rates, § 72.1 — Powers of Commission — Price Control Act — Increase during war.

3. Consideration must be given to the underlying purpose of the original Emergency Price Control Act of 1942 in determining whether the powers of the Commission to regulate utility rates were cut down and restricted by the Act of October 2, 1942 amending the Emergency Price Control Act of 1942 so that it can grant an increase in rates only to the extent that it finds it necessary to aid in the effective prosecution of the war or to correct gross inequities, p. 40.

Rates, § 72.1 — Powers of Commission — Price Control Act — Increase during war.

4. Consideration must be given to the cognate purpose of the Act of October

2, 1942 amending the Emergency Price Control Act of 1942 in determining the power of the Commission to grant an increase in utility rates during war, p. 40.

Rates, § 72.1 — Powers of Commission — Price Control Act — Increase during war.

5. The Commission, in passing on an application for authority to increase rates, is not bound by the standard of the Act of October 2, 1942 amending the Emergency Price Control Act of 1942 (furtherance of the war or correction of gross inequities), since that standard is set for the guidance of the President and not for the regulatory agencies, p. 40.

Rates, § 72.1 — Powers of Commission — Price Control Act.

6. Utility rates were excluded from the subject matter over which the Price Administrator was given broad powers of control in the Emergency Price Control Act of 1942, p. 40.

Rates, § 72.1 — Powers of Commission — Price Control Act — Notice to Federal authorities.

7. Commission power to fix utility rates was left unchanged by the Act of October 2, 1942 amending the Emergency Price Control Act of 1942, except that the designated agency of the President was given the right to intervene and be heard in any rate proceeding before any increase in rates in force on September 15, 1942, could be made effective, p. 40.

Rates, § 72.1 — Powers of Commission — Price Control Act.

8. The standard applicable to price regulation by the President after September 15, 1942, was not also imposed upon regulatory Commissions generally and upon the Public Utilities Commission of the District of Columbia in particular, since such purpose was not expressed in the act and the latter's powers had been fixed by Congress and repeals by implication are not favored, p. 40.

Rates, § 72.1 — Powers of Commission — Price Control Act — Notice to Federal authorities.

9. The Act of October 2, 1942 amending the Emergency Price Control Act of 1942 clearly recognized the power of Commissions to fix utility rates and left this power undisturbed except that it imposed upon utilities seeking a rate increase the duty to give thirty days' notice to the President's agency or to consent to its timely intervention before any general increase in rate, effective on September 15, 1942, could be made in a rate proceeding, p. 40.

Appeal and review, § 53 — Commission findings — Conclusiveness of findings.

10. Commission findings may not be set aside by the courts where there is evidence to support them, p. 46.

Rates, § 181.1 — Increases during war — Inflationary effect — Increases in operating costs.

11. The risk of such inflation as may be expected to follow from an increase of $\frac{1}{37}$ of 1 per cent in utility rates was amply justified where the Commission found that the utility could not finance its needs and install the extensions required to fill the demands of the area unless a decline in earnings were arrested and the principles of a sliding scale arrangement, previously established by the Commission on which the credit position of the company depended, were preserved, p. 46.

WASHINGTON GAS LIGHT CO. v. BYRNES

Rates, § 44.1 — Price Control Act — Intervention by President's representative — Scope of proceeding.

12. The right to intervene in a rate proceeding conferred upon the Price Administrator by the Act of October 2, 1942 does not include the power to compel the Commission to undertake a complete rate investigation against its better judgment, much less an investigation upon lines contrary to the governing statute, p. 47.

Rates, § 72.1 — Powers of Commission — Price Control Act.

13. Congress, in passing the Act of October 2, 1942, did not intend to abrogate or repeal the powers given to the Commission by statute to fix reasonable fares and just rates for utilities in the District of Columbia by giving the Price Administrator the right to compel a complete overhauling of the established practice of the Commission and the adoption of a new and different standard, where experience had shown that the prevailing practice was adequate to secure the objective of adequate service with a fair rate of return on the utility's investment, p. 47.

Rates, § 45 — Commission powers — Limitations on powers.

14. The power to fix rates is a legislative power which has been delegated by Congress to the Commission and, in its exercise within constitutional limits, the discretion of the Commission may not be controlled even by the courts, nor can the Commission be confined to any particular standard or method in the field of its discretion, p. 47.

Rates, § 645 — Scope of proceeding — Price Control Act — Increase during war.

15. The refusal of the Commission, in a proceeding involving a rate increase pursuant to a sliding scale arrangement previously established, to suspend the application of the sliding scale, to reëxamine its basis in a complete investigation of all the elements that enter into the determination of a utility rate, and to ignore the reasonable needs of the utility in the meantime, was reasonable and legal and well within its lawful discretion, p. 47.

(MILLER, J., dissents.)

[July 26, 1943.]

APPEAL *from judgment reversing and remanding Commission orders authorizing higher gas rates under sliding scale arrangement and limiting participation by Federal officers in rate proceeding, reversed and remanded. For decision authorizing rate increase, see (1942)46 PUR(NS) 1; and for subsequent proceedings based on Emergency Price Control Act of 1942, see (1942) 46 PUR(NS) 45, 50, and (1943) 48 F Supp 703, 47 PUR(NS) 1.*

APPEARANCES: E. Barrett Prettyman, with whom F. G. Awalt, Raymond Sparks, and C. Oscar Berry were on the brief, for appellant in Nos. 8501 and 8503. Stoddard M. Stevens, Jr., of the Bar of the state of New York, who was allowed to appear for appellant in Nos. 8501 and 8503, pro hac vice, by special leave of court, was also on the brief; Lloyd B. Harrison, Special Assistant Corporation Counsel, D. C., with whom Richmond B. Keech, Corporation Counsel, D. C., and Vernon E. West, Principal

Corporation Counsel, D. C., were on the brief, for appellant in Nos. 8502 and 8504; Harry R. Booth, Utilities Counsel, Office of Price Administration, and David F. Cavers, Assistant General Counsel, with whom George J. Burke, General Counsel, W. Russell Gorman, and Howard S. Guttmann were on the brief, for the appellee in each case, and appeared by authority of the Price Administrator.[1]

Before Groner, C. J., Soper, Circuit Judge sitting by designation, and Miller, Associate Justice.

SOPER, C. J.: These appeals are brought to test the validity of an increase in gas rates in the District of Columbia authorized by the Public Utilities Commission of the District but objected to by the Director of Economic Stabilization and his representative in this matter, the Administrator of the Office of Price Administration.

On October 13, 1942, 46 PUR (NS) 1, the Public Utilities Commission, one Commissioner dissenting, issued an order whereby an increase of the rates and charges of Washington Gas Light Company for the 12-month period beginning September 1, 1942 was authorized. The order was passed in a proceeding instituted by the Commission on March 20, 1942, for the purpose of adjusting the rate of the company in conformity with a sliding-scale arrangement established by the order of the Commission on December 13, 1935 under the Public Utilities Act of the District of Columbia, §§ 43–317, D C. Code, 1940. The Commission then found the rate base as of June 30, 1935, exclusive of working capital, to be $21,000,000 and the fair rate of return to be 6½ per cent. Under the sliding-scale plan the accounts of the company have been audited by the Commission annually since 1935 and the rate base has been kept up to date by adding new property at cost and by deducting retired property; and the earnings of the company for each 12-month period ending June 30th have been ascertained so as to fix the rates for the ensuing year beginning on September 1st according to the formula that if the return for the preceding year was greater or less than 6½ per cent, the rates for the ensuing year would be decreased or increased in certain proportions. For example, if the return for the preceding year was between 5½ and 6 per cent, an increase would be made to raise the rate three-quarters of the way up to 6½ per cent.

In operation such a sliding-scale plan gradually works towards a rate base valued at cost since additions to the property are recorded at cost; and in periods of continuously rising prices, such as have prevailed since 1935, the plan results in a rate base in each year of less than actual value at that time. In such a period the plan also produces less than the original rate of return fixed by the Commission because estimated expenses for the ensuing year are placed at the level of the year that has just past. In actual experience in the District of Columbia the plan has resulted in reductions in rates for each year in the intervening period, except in 1937 and in 1941 when no changes were made. The calculations made in August, 1942, showed that in the preceding test year the company had earned 4.87 per cent on the rate base.

[1] 7 Fed Reg 7910.

The Commission's accountants reported that under the sliding-scale arrangement, disallowing all excess profits taxes, the company was entitled to an increase in rates of $326,000 while the figures presented by the company showed that it was entitled to an increase of $383,000. The order of the Commission authorized an increase of $201,424.74. In other words, the increase allowed was approximately $123,000 less than that indicated by the sliding scale. It is estimated that this increase will permit the company to make a net return of 5.58 per cent on the rate base.

The interest of the Director of Economic Stabilization and of the Administrator of the Office of Price Administration, referred to herein interchangeably as the Price Administrator, grows out of the possible inflationary effect of an increase of gas rates upon an increase of prices generally which Congress sought to check by the passage of the Emergency Price Control Act of 1942 approved January 30, 1942, 56 Stat 23, 50 USCA (App.) § 901(a) et seq. and the amendment thereof by the Inflation Control Act of October 2, 1942, 56 Stat —, 50 USCA (App.) § 961 et seq. That the interest of the Price Administrator in this rate proceeding is legitimate was recognized by the Commission from the beginning, although § 302(c)(2) of the Price Control Act contains the express provision that "nothing in this act shall be construed to authorize the regulation of . . . rates charged by any common carrier or other public utility." Counsel for the Price Administrator was present at the pretrial conference on August 18, 1942, and throughout the subsequent hearings in August and September, and was given full opportunity to participate within the scope of the proceedings fixed by the Commission. The hearings came to a close on September 30, 1942, and, as we have seen, the Commission's decision and order were filed on October 13, 1942, *supra*. In this order the Commission directed the attention of the company to the following provision contained in the Amendatory Act of October 2, 1942, which had been passed in the meantime:

"The President may, except as otherwise provided in this act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: Provided, That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, state, or municipal authority having jurisdiction to consider such increase." (50 USCA (App.) § 961.)

By executive order promulgated on October 3, 1942, under this quoted provision of the amendatory act, 7 Fed Reg 7871, the President established the Director of Economic Stabilization and designated him as the agency to receive notice of any increase in public utility rates; and on October 14, 1942, the Director designated the Price Administrator as his

representative in proceedings affecting utility rates. On October 14 the company gave the required thirty days' notice of the proposed increase to the Price Administrator and he promptly made application that he be allowed to intervene in the proceeding and that the order of the Commission of October 13, 1942, *supra,* increasing the rate be vacated. The Commission, by order of October 23, 1942, 46 PUR(NS) 45, reopened the case for the purpose of receiving from the Price Administrator additional evidence relating to the inflationary effect, if any, of the increase in rate previously authorized, and granted intervention for this purpose; and the formal consent of the company to the intervention was filed on October 30, 1942. Additional hearings were held on two days at which little change was made in the evidence, and on November 9, 1942, 46 PUR(NS) 50, the Commission refused to vacate its order of October 13, 1942. Subsequently, petitions for reconsideration were filed on behalf of the Price Administrator and the Director, and these petitions were denied by the Commission on November 16, 1942. The result was that effect was then given to the order of October 13, 1942, increasing the rates for the 12-month period beginning September 1, 1942, which had been under reconsideration during the reopening of the proceedings. Both the Director and the Price Administrator appealed to the district court under the provisions of Title 43–705 of the District Code, from the order of October 13, 1942, allowing the increase, and also from the order of October 23, 1942, *supra,* reopening the proceedings for the limited purpose indicated. The district court, after hearing, decreed that the order of the Commission be vacated but stayed its judgment pending appeal to this court, upon agreement of the company to make proper refund to consumers if the decision should be affirmed. Subsequently it appeared that the certified copy of the proceedings before the Commission was not actually before the district court at the time of its hearing and decision, as contemplated by Title 43–705 of the District Code, and thereupon a motion was filed by the Commission and the company for a reconsideration of the court's decision, but this petition was denied. The appeals of the Director of Economic Stabilization and of the Price Administrator from both of the orders of the Commission constitute the subject matter now before this court.

[1, 2] Two contentions advanced by the opposing parties to this appeal will first be considered because they go to the form rather than the substance of the controversy and in our opinion are devoid of merit. On behalf of the Price Administrator it is contended that the judgment of the district court should be sustained because the Commission's order of October 13, 1942, authorizing an increase in the rates was issued after the passage of the Act of October 2, 1942 without complying with the requirements of that act for prior notice to the President's agency and consent on the part of the utility to a timely intervention by the agency in the proceeding before the Commission. This recital of facts is correct as far as it goes but it takes no ac-

count of the notice served on the Price Administrator on October 14, 1942 or of the reopening of the case and the intervention of the Price Administrator and the opportunity afforded him to be heard during the period ending November 16, 1942, when the reopened proceedings came to an end and the Commission finally determined to stand by its order of October 13, 1942. The notice of October 14, 1942 was thus given thirty days before the final determination of the Commission. Moreover the contention ignores the fact that the amendatory act brought about no substantial change in the parties to the proceeding, since the Administrator of the Office of Price Administration, who was designated to represent the Director of Economic Stabilization after the passage of the amendatory act, had been in the proceeding from the beginning and was represented both before and after the passage of the amendment by the same attorney. Everything that could be said by the Director of Economic Stabilization in opposition to the increase of rates had already been said by the Administrator of the Office of Price Administration throughout the proceeding and was reaffirmed after the intervention of the Director. In short, the contention does not go to the substance of the matter and the provisions of the amendatory act requiring prior notice and consent to intervention by the Presidential agency were complied with.

On the other hand, a contention of the Commission and of the company that the decree of the district judge should be reversed because he did not have the record of the case before the Commission physically before him at the time of his decision is also without substantial merit. It is based upon Title 43–705 of the District Code that any appeal from a decision of the Commission shall be heard upon the record before the Commission, and that no new evidence shall be received. Reliance is also placed upon decisions which hold that there is an absence of due process if the judgment of a court is not based upon a consideration of the record. Morgan v. United States (1936) 298 US 468, 80 L ed 1288, 56 S Ct 906; (1938) 304 US 1, 23, 82 L ed 1129, 1135, 23 PUR(NS) 339, 346, 58 S Ct 773, 999. We think it is clear, however, that the material parts of the record were in effect brought to the attention of the district judge at the time of the hearing and before his decision was rendered. There is in fact no contention that he was not substantially advised of the merits of the controversy from the briefs and arguments of counsel. Moreover, it appears that he made a close examination of the record when the motion to reconsider the decision was before him and found nothing therein to alter the opinion which he had already reached. Under these circumstances it is obvious that the objection is formal rather than substantial, and that no good purpose would be served by remanding the case to the district judge for further consideration.

The important issue in the case turns upon the action of the Commission in confining the rate investigation to an application of the sliding scale to prevailing conditions and a

consideration of the possible inflationary effect of a price increase, and in refusing a demand of the Price Administrator that a thoroughgoing examination be made into the rate base, the rate of return, operation expenses and depreciation, and all other matters relative to the establishment of a fair return. The position of the Price Administrator is based in part on his interpretation of the price control statutes and in part upon his contention that he was denied the full rights of an intervenor to which he was entitled under the amendatory act.

[3–9] With respect to interpretation [2] the Price Administrator contends, on the strength of a clause con-

[2] The particular provisions of the Emergency Price Control Act of January 30, 1942, and of the amendatory act of October 2, 1942, which are interpreted herein, are as follows:

ACT OF JANUARY 30, 1942

Section 1 (a) It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance annuities, and pensions, from undue impairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, state, and local governments, which would result from abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values; to stabilize agricultural prices in the manner provided in § 3; and to permit voluntary coöperation between the government and producers, processors, and others to accomplish the aforesaid purposes. . . .

Section 2 (a) Whenever in the judgment of the Price Administrator (provided for in § 201) the price or prices of a commodity or commodities have arisen or threaten to rise to an extent or in a manner inconsistent with the purposes of this act, he may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the purposes of this act. So far as practicable, in establishing any maximum price, the Administrator shall ascertain and give due consideration to the prices prevailing between October 1 and October 15, 1941 . . . for the commodity or commodities included under such regulation or order, and shall make adjustments for such relevant factors as he may determine and deem to be of general applicability, including the following: Speculative fluctuations, general increases or decreases in costs of production, distribution, and transportation, and general increases or decreases in profits earned by sellers of the commodity or commodities, during and subsequent to the year ending October 1, 1941. . . .

Section 302 (c) . . . Provided, That nothing in this act shall be construed to authorize the regulation of (1) compensation paid by an employer to any of his employees, or (2) rates charged by any common carrier or other public utility. . . .

ACT OF OCTOBER 2, 1942

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. The President may, except as otherwise provided in this act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: Provided, That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, state, or municipal authority having jurisdiction to consider such increase.

Section 2. The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this act; and may exercise any power or authority conferred upon him by this act through such department, agency, or officer as he shall direct. The President may suspend the provisions of §§ 3(a) and 3(c) and clause (1) of § 302(c) of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the pro-

tained in § 1 of the amendatory act, that the powers of the Commission to regulate utility rates in the District of Columbia was cut down and restricted by the amendment so that the Commission can now grant an increase in utility rates only to the extent that it finds it "necessary to aid in the effective prosecution of the war or to correct gross inequities." In deciding this question consideration of course must be given to the underlying salutary purpose of the original act as shown in § 1 "to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering . . .; . . . to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors . . . from undue impairment of their standard of living; . . . to assist in securing adequate production of commodities and facilities." It is also necessary to give proper weight to the cognate purpose of the amendatory act as shown by § 1 thereof to supplement and further effectuate the purpose of the original act and to aid in the effective prosecution of the war by enlarging the power of the President and authorizing him to issue a general order "stabilizing prices, wages, and salaries, affecting the cost of living"; such stabilization "except as otherwise provided in this act" to be as far as practicable "on the basis of the levels which existed on September 15, 1942." The subsequent period was taken care of by giving the President power "except as otherwise provided in this act" thereafter to "provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities." This grant of power is subject to the proviso that no public utility "shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, state, or municipal authority having jurisdiction to consider such increases."

The contention of the Price Administrator is that this section first gives the power to the President to stabilize all prices, including utility rates, on the levels existing on September 15, 1942, and then sets up a definite standard for subsequent adjustments; and that the proviso merely alters the method whereby increases in utility rates may be made, by taking the power away from the President and giving it to the Commission, but retains the standard which must be applied to all increases whether authorized by the President or the Commission. This construction, however, is seen to be strained and unnatural when all the relevant provisions of the original act and of the amendatory act are taken into consideration. In the first place it is noteworthy that the standard specified in § 1 of the amendatory act as the

visions of this act, but he may not under the authority of this act suspend any other law or part thereof.

Section 7(c) Nothing in this act shall be construed to invalidate any provision of the Emergency Price Control Act of 1942 (except to the extent that such provisions are suspended under authority of § 2), or to invalidate any regulation, price schedule, or order issued or effective under such act.

necessary basis for a price increase, that is, the furtherance of the war or correction of gross inequities, is set for the guidance of the President and not for the regulatory agencies. To find their governing standards recourse must be had to the statutes creating them and outlining their powers. Congress had in mind in passing the original act that utility rates are subject in the District of Columbia and almost everywhere else to the control of regulatory bodies and are, therefore, not exposed to "speculative, unwarranted, and abnormal increases." Accordingly Congress provided in § 302(c) of the act "that nothing in this act shall be construed to authorize the regulation of (1) compensation paid by an employer to any of his employees or (2) rates charged by any common carrier or other public utility, . . ."

In contrast with this limitation is the power conferred upon the Price Administration by § 2(a) of the original act to establish the maximum price of a commodity which has risen or threatens to rise to an extent inconsistent with the purposes of the act, giving due consideration to the prices prevailing between October 1 and October 15, 1941, and the further power to make subsequent adjustments for relevant factors, including speculative fluctuations, general increases or decreases in cost of production, etc., during the year ending October 1, 1941. It is obvious that utility rates were excluded from the subject matter over which the Price Administrator was given broad powers of control in the original act.

It is equally clear that the power of regulatory bodies to fix utility rates was left unchanged by the amendatory act except that the designated agency of the President was given the right to intervene and to be heard in any rate proceeding before any increase in rate in force on September 15, 1942 could be made effective. Power was given to the President to stabilize prices at the levels of September 15, 1942 "except as otherwise provided by this act;" and power was also given him to make adjustments thereafter if he should find it necessary to expedite the war or correct inequities "except as otherwise provided in this act." The other provisions, to which these exceptions relate, include § 2 of the amendatory act wherein the President was given power to suspend the provisions of § 3(a) and § 3(c), and clause 1 of § 302(c) but was denied authority to suspend any other law or part thereof. Also relevant to these exceptions is § 7(c) which expressly provides that nothing in the act shall be construed to invalidate any provision of the original act except to the extent that such provisions may be suspended under the authority of § 2. As we have seen, clause 302(c) of the original act forbade the regulation of (1) compensation paid by an employer to his employees and (2) rates charged by any public utility. For our purposes it is especially significant that although the President was given power to nullify the prohibition against the regulation of wages contained in the original act the power to nullify the prohibition in that act against the regulation of utility rates was denied him.

No room is left for the argument that the standard applicable to price regulation by the President after

September 15, 1942 was also imposed upon regulatory Commissions generally and upon the Public Utilities Commission of the District of Columbia in particular. If such had been the purpose of Congress there is no good reason why it failed to express it, especially as the powers of the Commission had already been fixed by Congress itself in the Public Utility Act of the District of Columbia, and repeals by implication are not favored. Even more persuasive is the proviso in § 1 of the amendatory act, which is the only part of the act that expressly refers to public utilities and increases in rates over those in effect on September 15, 1942. This proviso clearly recognized the power of the Public Utilities Commission of the District of Columbia and other regulatory bodies to fix utility rates, and leaves this power undisturbed except that it imposes upon utilities seeking an increase the duty to give thirty days' notice to the President's agency, and to consent to its timely intervention before any general increase in rate in effect on September 15, 1942, can be made in a rate proceeding. A corollary of this duty of the utility is of course the duty of the regulatory body to accord the intervenor a fair hearing.

The legislative history of the amendatory act of October 1, 1942 supports this conclusion. When the bill was before the Senate, Senator Norris submitted an amendment which was adopted by the Senate that provided that rates charged by a public utility should not be increased without the consent of the President. But this amendment was rejected when the bill went into conference, and the proviso in § 1 of the act as it now stands was substituted. When the conference report was returned to the Senate the subject was discussed at length by Senator Norris and certain interchanges took place between him and Senator Brown during the debate. The latter is party to the pending appeal in his capacity as Administrator of the Office of Price Administration. It clearly appears from their remarks that the senators understood that the opportunity afforded the President's representative to intervene in a rate hearing did not confer upon him the power to participate in the decision or to control the proceeding, but merely the right to show that an increase in rates would tend to increase the cost of living and thereby impair the stabilizing effect of the government's price regulation, with the right of appeal where the Commission's action is reviewable by the courts. In short, as Senator Norris expressed it, the act conferred no technical relief but only a great moral effect which would flow from an unwarranted opposition of a regulatory Commission to the efforts of the Price Administrator to check inflation. See 88 Cong. Rec. 155, 7443, 7877–8, 7901, 7971, 7973, et seq.

It will be perceived that this interpretation gives effect to the proviso in that it preserves the power of the regulatory body, while exposing it to the public appeal of a government official charged with the administration of an act of Congress designed to protect the welfare of the entire nation. The record in this case shows that the intervention of the Price Administrator was not without influence or effect. The Commission was not ob-

livious to the economic conditions consequent upon the war and did not disregard them in formulating its findings and opinion. It pointed out that its responsibilities were twofold, that is, to determine what increase, if any, the company was entitled to under the sliding scale for the ensuing year and also to give recognition to the existing economic situation and the ability of the company to finance needed plant extension and render adequate service to consumers at the nation's capital. The intervention and assistance of counsel for the Price Administrator were noted and findings, supported by substantial evidence, were made to the following purport and effect:

The Commission's accountant computed that the company was entitled under the sliding scale to a rate increase of $324,718.06, while the company's accountants computed that the increase should be $381,597. The difference between these amounts was caused by certain adjustments of operating expenses and taxes made by the Commission's accountant, which the Commission adopted. The Commission, however, did not allow even the full amount of the increase indicated by its accountant's calculation, but deducted the additional sum of $123,293.32, making the net increase $201,424.74. This result was accomplished (except for the deduction of one negligible item) by including accruals for Federal income taxes at the rate of 31 per cent for the last six months of the test year ending June 30, 1942, instead of 40 per cent as provided by the sliding scale. On this point the Commission said:

"However, present-day conditions compel us to consider whether accruals for Federal income taxes at rates considerably higher than rates in effect in previous years should be allowed in their entirety for rate-making purposes. Much has been said recently regarding the allowance of Federal income taxes on a normal-year basis rather than on the basis prevailing in a so-called 'abnormal year.' Our difficulty here lies in the necessity for making a distinction between normal and abnormal taxes. It is true that rates of taxation imposed during the year 1941 and proposed for the year 1942 are substantially in excess of rates imposed in prior years. However, it requires very little imagination to foresee that the proposesd rate for 1942, while such rate is abnormal as compared with the rates in effect in prior years, may well be a normal or even a subnormal rate for some years to come. After weighing all factors to the best of our ability, we conclude that for the purpose of determining the amount available for rate increase for the rate year beginning September 1, 1942, the calculation of Federal income taxes for the test year under consideration (July 1, 1941, through June 30, 1942) at the rate of 31 per cent is reasonable. Such a calculation will result in a further decrease of $115,863.09 in adjusted operating expenses and will eliminate the adjustment of $4,929.39 to provide for increase in taxes under the provisions of § 6 of the sliding-scale arrangment.

"With respect to excess profits taxes, we are of the opinion that no increase in rates should be predicated upon the liability of a utility for excess profits taxes. For this reason we

have disallowed as an operating expense for the test year ended June 30, 1942 the excess profits tax of $43,928.02, in order to prevent the direct inflationary effect which such allowance would invite.

"The record indicates that the company will not be liable for excess profits tax for the year 1842.[3] . . ." (46 PUR(NS) 1, 10.)

The Commission gave especial attention to the financial condition of the company and its need for additional capital. In this respect it said:

"There is still another and very important problem for consideration, namely the financial position of the company and particularly its ability to secure capital economically for the purpose of expanding its plant to meet the growing demands for gas service. We must weigh the necessity for an increase in rates against the broad problem of adequate service. Low rates are desirable only when coupled with adequate service, and such service cannot be rendered by the company if it is unable to secure funds to provide the necessary additional facilities. The District of Columbia has been characterized as the No. 1 defense area of the United States, and it is vital that the company be in a position at all times to provide adequate service.

"It is a matter of record that the company recently attempted to sell 40,000 shares of $5 cumulative preferred stock, but was successful only to the extent of being able to sell 18,206 shares of this stock. This was due to a number of factors and a recitation of events and facts preceding and subsequent to the offering of this stock shows that the financial position of the company merits our most serious consideration.

"On January 17, 1941, the company filed an application with this Commission for authority to increase its capitalization by 90,000 shares of $4.25 preferred stock. Due principally to the lack of a quorum on the Commission this application was not acted upon until March 26, 1942, Order No. 2221, 43 PUR(NS) 435. At that time, due to depressed market conditions, the company was unable to sell this newly created stock and endeavored to sell 40,000 shares of its $5 cumulative preferred stock with the result heretofore stated. In approving the sale of the $5 stock the Commission considered, among other factors, the financial position of the company as of December 31, 1941. At that time income deductions and preferred dividends were earned 1.88 times, and the earnings per share of common stock were $2.24. Our order was issued April 21, 1942, and income for the twelve months ended April 30, 1942, showed that income deductions and preferred dividend coverage had declined to 1.75 times, while earnings per share of common had declined to $1.96. For the twelve months ended July 31, 1942, the former figure had declined to 1.67 times and the latter to $1.80. This decline in income is not due entirely to increased provision for Federal income taxes. Substantial increases in

[3] The Commission eliminated from operating expenses excess profits taxes paid by the company for the year 1941 although it recognized the equity of a contention of the company that it would not have been liable for these taxes if the Commission had been in a position to act promptly on its application for the issuance of additional preferred stock in 1941 to which reference is hereafter made.

the cost of labor and material have occurred during the period under discussion, and such increases have been provided for only in part in the determination of the amount available for rate increase. Labor costs included in operating expenses for the test year under consideration exceed labor costs for the prior test year by more than $300,000, a part of which was attributable to the increased volume of business." (46 PUR(NS) at pp. 11, 12.)

Finally, after careful consideration of all factors having a bearing on the case, including the credit position of the company, the Commission reached the opinion that there should be an increase in rate of $201,424.74 under the sliding-scale arrangement. In respect to the potential inflationary influence of this increase the Commission said:

"This increase in rates will not restore the earnings of the company to the level obtaining prior to the decline, nor is it the intent of the sliding-scale arrangement to do so. It will, however, tend to arrest the decline and preserve the principles inherent in the sliding-scale arrangement, on which, as heretofore stated, the credit position of the company depends in large measure. . . .

"The new domestic rates will result in an average increase of 3 cents per month per customer. Domestic customers using 2,500 cubic feet or less per month will sustain no increase. Space-heating customers' monthly bills for the 8-month heating season will be increased an average of 57 cents for all customers. The typical space-heating customers' bills will be increased by 72 cents per month for the 8-month heating season. The average increase for commercial and industrial customers will amount to 46 cents per month. The total increase for all customers is 2.28 per cent in excess of rates for the preceding year.

"The cost of gas constitutes but 1.17 per cent of the average cost of living in Washington, according to statistics of the Labor Department, and based on the percentage increase for gas service just stated the cost of living index would be increased by only about 1/37 of 1 per cent. We cannot conceive that such an increase would have material inflationary tendencies." (46 PUR(NS) at pp 13, 14.)

[**10, 11**] Manifestly, the order of the Commission was issued only after a deliberate and careful study of the factors affecting the business of the utility in wartime Washington without a trace of hasty or arbitrary conduct on the Commission's part. The findings of such an administrative agency, where there is evidence to support them, may not be set aside by the courts; Swayne & Hoyt v. United States (1937) 300 US 297, 304, 81 L ed 659, 57 S Ct 478; Norfolk & W. R. Co. v. United States (1932) 287 US 134, 77 L ed 218, 53 S Ct 52; American Teleph. & Teleg. Co. v. United States (1936) 299 US 232, 81 L ed 142, 16 PUR(NS) 225, 57 S Ct 170; and in this case the findings of the Commission in the application of the sliding scale are not seriously disputed. Indeed the Commission did not give the utility all the advantage to which the sliding scale entitled it. Thus, the Commission allowed accruals for income taxes at the rate

of 31 per cent although the sliding scale provided for an allowance of 40 per cent; and this reduction cost the company $123,000 in revenue for the ensuing year. Moreover, substantial increases in the cost of labor and material, common to all kinds of business during the war, were compensated for only in part in determining the increase of rates allowed, so that it was held down to the sum of $200,000. The conservatism of this action is demonstrated by the finding of the Commission, based on convincing evidence, that the company could not finance its needs and install the extensions required to fill the demands of the "No. 1 Defense Area of the United States," unless the decline in earnings was arrested and the principles of the sliding-scale arrangement, on which the credit position of the company depended, were preserved. Viewed from this standpoint, it becomes clear that the intervention of the Price Administrator was not in vain. Indeed it would be difficult to say that the Commission did not comply with the standard imposed by the amendatory act upon the adjustment of prices other than utility rates, that the adjustment be found "necessary to aid in the effective prosecution of the war or to correct gross inequities." Certainly the risk of such inflation as might be expected to follow from an increase of 1/37 of 1 per cent in the cost of living in the District of Columbia was amply justified.

[12–15] The principles of the sliding scale were the subject of careful consideration when it was proposed by the people's counsel and accepted by the utility in 1935. Acceptance by the utility was necessary since the statute, District Code Title 43–306, required that the Commission value the property of a utility at its fair value and the sliding-scale arrangement eventuates in the course of time in a cost valuation. Title 43–317 permits a public utility to adopt a sliding scale of rates and dividends, if it is found by the Commission to be reasonable and just. Such an arrangement involves the basic elements of rate making, including a rate base, a fair rate of return, and a correct determination of revenues, expenses, and depreciation; and in its operation, capital additions and retirements as well as revenues and expenses are subject to constant supervision and control of the Commission.

In the case of the Washington Gas Light Company, as we have seen, the system has brought about a reduction in rates in each year since 1935, except 1937 and 1941 when no change was made. All additions to the property have been entered at cost, and in the period of rising prices the gap between the present value of the property and the rate base allowed under the scale has widened. Likewise, the estimated expenses based in each year on the expenses of the preceding year have proved too small, and the rate of return has fallen to 4.87 per cent instead of 6½ per cent allowed in 1935. Meanwhile, the benefit of economies has been transferred to the consuming public, and the accumulation of a cash reserve by the company to meet the growing demands of the community has been precluded. It was under these circumstances that the Commission held that the need for an increase of rates was imperative,

and that the sliding scale should be applied as it had been in previous years when it brought about a decrease in rates.

The district judge in his consideration of the case found no fault with the propriety of the sliding scale or the manner in which it has heretofore been applied by the Commission; but he held that the scale should now give way in deference to the congressional policy expressed in the price control statutes. On this point he said:

"The sliding-scale arrangement is not a contract, certainly not one which binds the public. It must give way to public policy and to congressional enactment which expresses that policy. The Commission in good faith has sought to fulfill its obligations under the sliding-scale arrangement but may have lost sight of the check upon it which has been voiced by Congress. I am not unmindful that the effort and the cost in bringing about the sliding-scale arrangement was very great. I think it was the result of fair and honest judgment and has been found to be a good, workable, and economical plan, but it must now be subjected to a test not previously required." (48 F Supp 703, 47 PUR (NS) 1, 5.)

In view of the new statutes the judge concluded that it had become the duty of the Commission, upon the request of the Price Administrator, to reconsider the basic principles of the sliding scale, and that when the Commission refused to undertake this task, its action was "arbitrary and illegal." As to the scope of the investigation demanded by the Price Administrator the judge said:

"The Price Administrator claims that notwithstanding he was permitted to intervene the Commission nullified the permission by refusing to reconsider the basic principles of the sliding-scale arrangement in the light of the economic conditions and the government's program to prevent inflation. Appellants contend that by its rulings and pronouncements it limited its consideration to such data as would enable it to apply the formula of the sliding-scale arrangement in determining what rates were authorized by the sliding-scale arrangement." (47 PUR(NS) at p. 4).

There can be no doubt that the judge correctly stated the position of the Price Administrator as demanding a full and exhaustive examination into the rate base, the rate of return, the operating expenses and method of depreciation, and all other elements that usually enter into a utility rate investigation by a regulatory Commission. In his brief in this court the Price Adminisrtator said: " . . . It (the Commission) was under a legal duty to exercise the full measure of its statutory powers to prevent an increase in utility rates. It was, therefore, incumbent upon the Commission to reconsider all basic elements of the sliding-scale arrangement. Only by doing so could the Commission find whether the company would be subjected to undue hardship if a rate increase was denied, or whether the increase was necessary to cure a gross inequity or to aid in the prosecution of the war."

During the course of the hearing before the Commission, there was much informal discussion and many subjects were touched upon; but the most precise and comprehensive state-

ment of the attitude of the Price Administrator as to the scope of the investigation is contained in the following statement then made by his attorney: " . . . We must be given the right to examine every issue which the courts have held enters into the making of fair and reasonable rate regardless of the terms of sliding-scale arrangement or previous conclusions by the Commission that a rate increase is justified. If we are to comply with applicable judicial principles affecting the question of fair and reasonable rates, we must have the right to go into at least the following factors:

(1) What is a proper rate base? And on that point an inquiry should be made and promptly as to why the rate base should not be predicated upon the original cost of the company property. Why should the ratepayers be compelled to pay increased rates upon a rate base largely in excess of the original cost of the company's property?

(2) What are fair operating expenses of the company? Here the question of depreciation expense is a serious problem as far as the public is concerned since accrued depreciation was not deducted from the rate base.

(3) What are other proper operating expenses? Here the minority opinion by Commissioner Hankin must be given fair and adequate consideration.

(4) What are proper income taxes to be allowed or should the company's customers pay its war taxes?

(5) What is a fair rate of return for this company in the light of current economic conditions.

It must be of course clear that a full and complete inquiry for the purpose of determining what are fair and reasonable rates, must be made in order that the Commission may comply with its duty under the law. . . . "

In respect to each of these matters the Price Administrator asserted that the company was receiving an undue advantage under the sliding scale. For example, he said that the rate base was overvalued and should be revalued at original cost; that even without adjustment on the basis of the sliding scale the company would earn a return of 5 per cent in the ensuing year, which was sufficient under wartime conditions; that the method of computing retirement accruals contained in the sliding scale was more favorable to the company than an annual allowance for depreciation such as was approved (for a business of limited life) by the Supreme Court in Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736; that the Commission should not consider the 31 per cent income tax of 1941 as a normal prewar tax and permit the company to deduct it as an operating expense; and that other expense allowances were excessive.

All of these matters were discussed at great length during the extended hearings before the Commission. They were offered as reasons which, taken together, required a complete rate investigation. Indeed all of the subjects were so tied together that no substantial change could be made in one without a survey of the entire field. The Price Administrator made

no definite offer of proof in connection with these matters; indeed, he was in no position to do so, as he had not made the laborious calculations and studies that a thorough rate investigation necessarily entails. What he desired was an indefinite postponement of any increase in rates pending an exploratory investigation by the Commission in which he was willing to assist as best he could. As he said in his brief in this court:

"In the proceeding before this Commission, OPA and OES sought to enlighten the members of the Commission as to this program and the need for wholehearted support of the Commission. We also sought to explore with the Commission the factors to be considered in determining what the company's earnings have actually been and what they probably will be. We also sought to show that the change in economic conditions which had taken place since 1935, when the sliding-scale arrangement was made, required the Commission to take the appropriate steps to reconsider the arrangement."

In furtherance of this object the Price Administrator requested that the Commission undertake a revaluation of the company's rate base by applying a method that is in conflict with the provisions of Title 43–306 of the District Code wherein it is provided that the Commission shall value the property of every public utility in the District at the fair value thereof at the time of the valuation. In disregard of this governing statute the Price Administrator makes the following statement in his brief in this court: "Nevertheless, appellees have not requested the making of a valuation of the property of appellees. The government's view is that the rate base in utility rate cases is to be arrived at by taking the original cost or the prudent investment of the property with appropriate consideration for accrued depreciation. We have not sought a revaluation of the company's property in the sense that it is necessary for the Commission or the company to make reproduction cost appraisals. All we have said is that it should be necessary in determining the need of the company for a rate increase for the Commission to determine whether it would be unfair to limit the company's return to original cost with due consideration to the proper treatment of depreciation in line with the Supreme Court's decisions."

In its essence, the question raised in this aspect of the case is whether the Commission, as the regulatory body, or the Price Administrator, as intervenor, should control the scope of the investigation. We do not think that the mere right to intervene in a rate proceeding conferred upon the Price Administrator by the Act of October 2, 1942, includes the power to compel the regulatory body to undertake a complete rate investigation against its better judgment, much less an investigation upon lines contrary to the governing statute. The power and authority to fix reasonable, fair, and just rates for utilities in the District of Columbia was conferred by Congress upon the Commission, District Code Title 43–401. To this end the Commission is empowered to make rules and regulations for the administration of the act, for audits and investigations, and for the conduct of

its own proceedings and hearings. Title 43–202, 34–402. It may, in its discretion, proceed with or without notice upon its own initiative or upon reasonable complaint "to make such investigation as it may deem necessary or convenient." Title 43–408. The act is carefully drawn in considerable detail and expressly provides that it shall be interpreted and construed liberally in order to accomplish the purposes thereof. Title 43–1003.

It is not reasonable to suppose that Congress intended to abrogate or repeal the powers so carefully elaborated by giving the Price Administrator the right to compel a complete overhauling of the established practice of the Commission and the adoption of a new and different standard, when experience had shown that the prevailing practice was adequate to secure the objective of adequate service with a fair rate of return on the utility's investment. The power to fix rates is a legislative power which has been delegated by Congress to the Commission and in its exercise within constitutional limits the discretion of the Commission may not be controlled even by the courts. The utility itself cannot compel an investigation and a change of rate that is not confiscatory in the constitutional sense. Nor can the rate-making body be confined to any particular standard or method in the field of its discretion. That which was said of the Federal Power Commission in Federal Power Commission v. Natural Gas Pipeline Co. *supra,* is equally true of the Public Utilities Commission of the District of Columbia. The court, 315 US at p. 586, 42 PUR(NS) at p 138, said:

"The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end."

It must be borne in mind that there was no refusal on the part of the Commission to receive evidence with regard to the inflationary effect of an increase of rates. On the contrary the Commission expressed a desire to hear the Price Administrator and urged him to present any evidence in his possession on this point. Moreover, the Commission gave heed to present-day conditions by reducing the allowance which the sliding scale would have justified and at the same time ordered a small increase in rates in order to buttress the financial condition of the company and enable it to satisfy the abnormal demands upon it. The conflict arose when the Price Administrator departed from the field committed to his care and demanded that the Commission suspend the application of the sliding scale, and reëxamine its basis in a complete investigation of all the elements that enter into the determination of a utility rate by a regulatory body.

The investigation leading to the adoption of the sliding scale in 1935 required three and a half years for its completion and cost $750,000; and it is obvious that the kind of inquiry that the Price Administrator now demands could not be made without great expense of time and money. Our conclusion is that the refusal of the Commission to undertake such an investigation at this time, and in the meantime to ignore the reasonable needs of the company, was not arbitrary or illegal, but was well within its lawful discretion.

The judgment of the district court will be reversed and the cases remanded with instructions to dismiss the appeals from the Commission's orders.

MILLER, A.J., dissenting: I think the decree of the district court should be affirmed. The decision of this case does not turn upon the power of courts to interfere with the findings and determination of regulatory bodies, or upon the findings and determinations made by the Commission in the present case. The questions are (1) whether full intervention was permitted and a fair hearing given within the meaning of the applicable statute; (2) whether a rate increase was made contrary to the requirement of the statute.

Making full allowance for the fact that the Inflation Control Act of October 2, 1942,[1] represented a compromise between contending factions in Congress—as most legislation does—nevertheless some substantial purpose must have been intended to be served by inclusion therein of the provision "That no common carrier or other public utility *shall make any general increase* in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, state, or municipal authority having jurisdiction *to consider such increase.*"[2] [Italics supplied.]

In the first place, this proviso clearly defines the issue which is to be tried by the authority having jurisdiction of the case in which intervention is required, namely, whether or not the public utility "shall make any general increase in its rates." The issue is not whether an increase shall be made pursuant to an arrangement theretofore agreed upon, or upon notice theretofore given, or upon terms theretofore defined, or in such an investigation as may be deemed "necessary or convenient" by the authority. The issue is simply and plainly, *shall an increase be made.* The trial of no lesser issue, however arrived at, can satisfy the requirement of the statute. Limiting the Administrator's intervention to the application of a sliding-scale formula previously adopted, therefore, defeated the purpose of the act.

It is the duty of courts in interpreting statutes to avoid absurd results. Whatever may have been said in explanation of an act, its plain language cannot be disregarded. To limit the effect of the present act to "the right to show that an increase in rates would tend to increase the cost of living and thereby impair the stabilizing effect of the government's price reg-

[1] 56 Stat —, 50 USCA (App) § 961 et seq.

[2] 56 Stat —, 50 USCA (App) § 961.

ulation," would reduce it to an absurdity. It is a matter of common knowledge that increases in rates tend to increase the cost of living. The Commission might well be expected to take notice of the fact. Intervention and fair hearing would not be necessary to make such a showing. If no more had been intended by the act it could have been so indicated therein without requirement of notice or intervention.

Neither is the only alternative to such a purposeless intervention, "the power to *participate in the decision* or to *control the proceeding.*" It is reasonable to suppose that Congress intended an intervention of the usual character. Intervention in a trial court does not contemplate participation in the decision; neither does it give to the intervenor power to control the proceeding. But it does contemplate that the court may be required to try the issues contemplated by the applicable laws; it empowers an intervenor, just as any other party, to insist upon compliance with the law and to challenge, in an appellate court, the failure of the trial court to do so. No less was intended here.[3]

Considerable reliance is placed upon the provisions of the District Code defining the powers of the Commission. It is argued that experience has shown the prevailing practices of the Commission to be adequate to secure proper service and a fair rate of return, hence that it is not reasonable to suppose Congress intended to limit the powers originally conferred upon the Commission; especially as repeal by implication is not favored. In Henderson v. Washington, M. & A. Motor Lines,[4] this court said, concerning the Inflation Control Act of October 2, 1942: "But, apart from all statutes existing prior to October 2, 1942, and all orders, rules, and regulations made pursuant to those statutes, the Act of October 2, 1942, is conclusive of the issue presented for our decision. As it was enacted subsequent to the Interstate Commerce Act it supersedes that act, to whatever extent may be necessary to achieve its own purposes. Its clearly expressed purpose was to stabilize prices, wages, and salaries affecting the cost of living, upon the basis of the levels which existed on September 15, 1942." This language is equally applicable in the present case. On June 9, 1943, Judge Sibley, speaking for the fifth circuit court of appeals,[5] held that § 265 of the Judicial Code forbidding the grant of an injunction by a court of the United States to stay proceedings in a state court must be considered modified by the later provisions of the Emergency Price Control Act. The present case involves much less difficulty. The Commission is a creature of Congress; its powers are derived from legislation enacted by Congress; there is no question of policy to be surmounted, in interpreting the earlier statutes in such manner as to secure their conformance to the purposes of later acts. While repeals by implication are not favored, repeals by implication

[3] Cf. Federal Communications Commission v. National Broadcasting Co. decided May 17, 1943, 11 US Law Week 4385, — US —, — L ed —, 63 S Ct 1035.

[4] (1942) — App D C —, 46 PUR(NS) 193, 132 F(2d) 729, 732, cert denied April 5, 1943, — US —, — L ed —, 63 S Ct 854.

[5] Henderson v. Fleckinger, 136 F(2d) 381, 11 US Law Week 2879.

do occur. When, as here, a new law is designed to achieve a clear purpose, it must be respected; and inconsistent procedures, previously existing, must be disregarded. Consequently the rules adopted by the Commission governing its procedure and the shaping of issues have no vitality as against the requirement of the Act of October 2, 1942, that intervention must be permitted, or against any legal implications which flow from that requirement. From then on, it is not a question of the Commission or the Price Administrator controlling the proceedings. It is the *law* which controls the proceedings and if the Commission does not comply with the law, the Price Administrator's duty is to challenge its failure to comply; and ours to uphold the challenge.

Neither is it material to the decision of this case that the Commission *reduced the allowance* which the sliding scale would have justified. The important fact is that the Commission *allowed an increase of rates.* If that allowance was made without granting full intervention and a fair hearing within the meaning of the applicable statute then the action of the Commission was improper and the decision of the district court should be affirmed. With all deference to the majority, there *was* a refusal by the Commission to permit full intervention and to receive evidence with regard to the inflationary effect of an increase in rates. Only to the extent that offered evidence assumed the validity and unimpeachability of the sliding-scale arrangement, would the Commission receive it. Upon the same theory the Commission denied the Administrator's request to examine the company's books and records. And upon the same theory the Commission refused to permit inquiry concerning the validity of the basic assumptions of the sliding-scale arrangement.

An argument of convenience is made upon the theory that compliance with the Administrator's demand for intervention and hearing would have required "a complete rate investigation," "a survey of the entire field," "the laborious calculation and studies that a thorough rate investigation necessarily entailed," "a complete investigation of all the elements that enter into the determination of a utility rate by a regulatory body." Attention is called in this connection to the fact that the investigation leading to the adoption of the sliding scale in 1935 required three and a half years for its completion and cost $750,000. It is asserted that the kind of inquiry that the Administrator now demands could not be made without great expense of time and money. I do not so read the record. What the Administrator asked was merely a reconsideration of the *basic principles* of the sliding-scale arrangement in the light of present economic conditions and the government's program to prevent inflation; namely, what is a proper rate base; what are fair and proper operating expenses; what account should be taken of depreciation; what are proper income taxes to be allowed; what is a fair rate of return for the company in the light of current economic conditions? There was no suggestion that the great mass of information gathered prior to 1935 was not equally available for present purposes. There was no objection

to the introduction by the Commission of other available material in its files, just as is done by the Interstate Commerce Commission and by other regulatory authorities.

It is significant in this respect that the Commission, itself, went back of the sliding-scale arrangement in its allowance of an increase of rates. If, as is contended, an inquiry into the basic principles of a sliding-scale arrangement necessarily requires a 3-year investigation, at a cost of $750,000, how does the Commission explain its disregard of the sliding-scale arrangement in allowing accruals for income taxes at the rate of 31 per cent, although the sliding scale provided for an allowance of 40 per cent? Some basic principle of the arrangement must have been violated by that action. In short, my conclusion is that this argument about a large scale, expensive, time-consuming investigation, was advanced by the Commission and supported by the company as camouflage to hide their unwillingness to permit *any* inquiry which did not assume and admit the infallibility of the sliding-scale arrangement. And I conclude that, whatever the proper limits of inquiry may have been, the Commission fell far short of them in the present case. The Commission and the company apparently assume that only two alternatives were open (1) to proceed as the Commission specified in its original order of March, or (2) to enlarge the proceeding to permit a complete reinvestigation of every element, of fact as well as of principle, involved in the original sliding-scale arrangement. There were, instead, at least two other alternatives (1) to permit no increase in rates until the war is over, as a matter of policy; (2) to permit the Price Administrator to present such evidence as he deemed proper[6] concerning any phase of the matter; then, in deciding the case, to use, if the Commission pleased, the records of the earlier investigation, the sliding-scale arrangement and other of its pertinent records, compiled by its experts—and properly introduced as evidence. This could probably have been easily done in the time which was actually consumed, at the hearing, in contending over the scope of the intervention and the issues to be tried. In any event, I agree with the district court that: "The sliding-scale arrangement is not a contract, certainly not one which binds the public. It must give way to public policy and to congressional enactment which expresses that policy. . . . It must now be subjected to a test not previously required." (48 F Supp 703, 47 PUR(NS) at p. 5.)

It is suggested that the increase in rates, granted by the Commission in the present case, is very small, both in total and in their effect upon individual consumers. It is argued also that utility rates are not exposed to "speculative, unwarranted and abnormal increases," hence that Congress did not intend to apply to the guidance of regulatory authorities the wartime standards of the Inflation Control Act. I cannot follow this reasoning. Because Congress chose to retain *regulation* in authorities already existing, rather than placing it

[6] In the Henderson Case, *supra*, headnote 4, we said: " . . . the new Act . . . permits timely intervention by the Price Administrator . . . followed by such appropriate showing as he may wish to make."

in the hands of the President, cannot explain away the fact that such rates were brought within the compass of the act. There is no reason why the *standards* applicable in the one case should be inapplicable in the other. So far as concerns the minimal character of the rate increases I am content to adopt the language of Judge Vinson in the case of Lincoln Savings Bank of Brooklyn v. Prentiss M. Brown (decided May 7, 1943) when speaking for the United States emergency court of appeals, concerning the contention that the Price Act contemplated regulation only of those commodities, the prices of which substantially affect the cost of living, he said: "It is true that an increase in complainant's prices, in and of itself, does not substantially affect living costs. Complainant's statement is correct, so far as it goes, but it is deceptive in its intended inference that, for that reason, no purpose is served by the regulation of safe deposit rental rates. Accession to this type of reasoning would virtually destroy the effectiveness of the act. Complainant's argument is applicable to thousands of commodities besides its own. Clearly, however, *the collective effect of so many increased prices could create the very chaotic condition that the act was designed to prevent.* It is plain to us that there is compelling reason to restrain the complainant and others in its class from making their *individually inappreciable contributions* to what would result in a very appreciable total." [Italics supplied.]

The Administrator suggests the following possible construction of the proviso to the second sentence of § 1 of the Inflation Control Act: (1) "And such regulatory authority, in determining whether to grant or deny the increase, may give such effect, if any, to the national stabilization program as it may deem appropriate"; (2) "And such regulatory authority, in determining whether to grant or deny the increase, shall give effect to the national stabilization program"; (3) "And such regulatory authority, in determining whether to grant or deny the increase, shall grant the increase only if, and to the extent, it finds the increase necessary to aid in the effective prosecution of the war or to correct gross inequities." I agree with the Administrator that the third suggested construction is correct. The monopoly character of public utilities; the absolute dependence of the people upon them for service; the complicated structure of their holdings and their financing; these and other similar considerations are the very ones which caused the development of great Federal, state and local regulatory agencies. It is because such agencies are well equipped to supervise and regulate, that Congress decided to preserve their control, rather than to throw a greatly increased burden upon wartime emergency agencies such as the Price Administrator. But that decision does not by any means require the conclusion that these regulatory agencies were not to consider the existence of a war emergency or apply the wartime standards which are implicit in the Act of October 2, 1942. It was, undoubtedly, the duty of the Commission to consider the financial condition of the company, its ability to serve the Washington area, and its

ability to refinance itself. It is, also, undoubtedly the duty of the President, the Price Administrator, and other appropriate governmental agencies to consider the financial condition of other industries, of agricultural interests, of wage earners, and of men selected for military service. The exigencies of war make it necessary, however, to impose controls which would not be proper during peacetime.

When young men are giving their lives by thousands, when the normal economy has given way to the necessities of war, when industrial organizations, great and small, have been converted to war production or perhaps destroyed,[7] it seems to me that a curious lack of identification with our national emergency and our national effort is required, to continue speaking in terms of normal arrangements and peacetime formulae. It is true, as the history of this legislation shows, that it is a compromise. But the significant thing is that the disputed proviso was incorporated, at all, into the Act of October 2, 1942. If the intention of Congress had been to leave regulation of the utilities by existing agencies solely according to prewar standards, it was not necessary to say anything about them in this act. Of course it is possible to find language in legislative history which will support either side of a bitterly contested issue upon which a compromise is finally reached. Perhaps each proponent and opponent hopes that when the courts come to interpret their compromise language, the interpretation will fall his way. As previously stated, however, our task is to read the act in such manner as to avoid an absurd result and to give it meaning, in the light of its expressed over-all purpose. There can be no doubt of that purpose in the present case. It was certainly not the intention of the lawmakers to leave these regulatory bodies, or the utilities, free of concern for the wartime welfare of the country, to do business "as usual" according to such sliding-scale arrangements, designed for peacetime, depression-ridden Washington, as are involved in the present case.

The Commission's order of October 13, 1942, 46 PUR(NS) 1, specified that the new, increased rates became effective on September 1, 1942, under the terms of the sliding-scale arrangement. On October 14th, the company gave notice to the Price Administrator, but in that notice specified that the effective date of the increase was September 1, 1942, in its order of October 23, 1942, 46 PUR (NS) 45, the Commission specified again that the effective date of the increased rates was September 1, 1942, and it permitted intervention for the receipt of evidence concerning the increase in rates authorized by its order of October 13, 1942; on October 30, 1942, the company consented to intervention; in its order of November 9, 1942, 46 PUR(NS) 50, the Commission recited that intervention had been permitted for the purpose of receiving evidence bearing on the increase authorized by its order of October 13th; on November 16, 1942, it denied the Administrator's peti-

[7] See for an example of such possibilities, Perkins v. Lukens Steel Co. (1940) 310 US 113, 84 L ed 1108, 60 S Ct 869, and Lukens Steel Co. v. Perkins (1939) 70 App DC 354, 107 F(2d) 627.

tion for reconsideration. On the record of the Commission, therefore, its order of October 13, 1942, still stands; the increase in rates is effective as of September 1, 1942. The act provides that no increase in rates which were in effect on September 15, 1942, shall be made unless the utility, "*first* gives thirty days' notice . . . and consents to the timely intervention. . . ." [Italics supplied.] In my opinion the increase, made in this case, was in clear violation of the law, entirely apart from the merits of the case.

A study of the record, particularly as interpreted in the opinion of Commissioner Hankin, suggests that when the time comes to consider the case on the merits, some of the findings and conclusions of the Commission will not stand careful scrutiny. But those questions are not before us. The decree of the district court is clearly correct, on questions of procedure alone, and should be affirmed.

WISCONSIN PUBLIC SERVICE COMMISSION

James E. Needham

v.

Meehan Telephone Company

[2-U-1902.]

Public utilities, § 58 — What constitutes — Mutual telephone company.

1. A mutual telephone company is a public utility subject to Commission regulation, particularly where the company has facilities for long-distance service, p. 59.

Public utilities, § 44 — Test of status — Submission to regulation — Mutual telephone company.

2. That mutual telephone companies have, without exception, complied with the requirements of the Public Utility Law by filing annual reports, filing their rates with the Commission, and not attempting to change their rates without Commission approval, constitutes recognition of the public utility status of such a company, p. 59.

Service, § 125 — Duty to serve — Mutual telephone company.

3. A mutual telephone company, being a public utility, is obliged to serve any member of the public who is within its undertaking of service, p. 60.

Service, § 141 — Duty to serve — Forfeiture of corporate charter.

4. That a mutual telephone company may have forfeited its charter by reason of its failure to file reports with the Secretary of State as required by law does not change the obligation of the company to serve any member of the public within its undertaking of service, p. 60.

Service, § 141 — Duty to serve — Mutual telephone company — Forfeiture of charter.

5. A mutual telephone company either as a corporation or as an association of the former members of the company, if its charter has expired, owes a duty to furnish service to any member of the public within its undertaking when demand for that service has been made, since if the corporation has gone out of existence, the property which belonged to it now belongs to the persons who were members and such persons are the public utility involved, to be treated as a voluntary association operating the company, p. 60.

Service, § 175 — Extension — Notice to Commission.

6. The furnishing of telephone service to a member of the public who resides adjacent to the telephone lines of the company does not constitute an extension requiring prior notice to the Commission or to other telephone companies operating in the area, p. 60.

Service, § 128 — Denial of service —Mutual company — Service to nonmembers.

7. A mutual telephone company may not deny service to an applicant on the ground that he is not a member or stockholder of the company, p. 61.

Rates, § 432 — Proper rates — Mutual telephone company.

8. A member of the public living within the undertaking of a mutual telephone company is entitled to receive service at the company's present lawfully filed rates, p. 61.

Service, § 294 — Furnishing facilities — Telephones.

9. A member of the public coming within the scope of the undertaking of a mutual telephone company is entitled to service if he will furnish wires and poles between his residence and the telephone company's existing lines, p. 61.

[June 28, 1943.]

COMPLAINT *that mutual telephone company refused to serve nonmembers; order requiring service to applicant.*

By the COMMISSION: This is a proceeding instituted upon the Commission's own motion after receipt of an informal complaint by James E. Needham, Plover, Portage county, that he had requested Meehan Telephone Company to furnish him with its telephone utility service, and that service had been refused.

APPEARANCES: Applicant: James E. Needham, Plover; respondent: Meehan Telephone Company, by Edwin Parks, President, M. L. Barden, Secretary and Treasurer, Plover, Orin Glendenning, Director, Fred B. Fox, Director, Plover, and J. P. McCabe, stockholder and subscriber, Plover.

[1, 2] The evidence in this case shows that James E. Needham has requested Meeham Telephone Company to furnish him with telephone utility service and that said Meehan Telephone Company has refused to do so. This refusal was not entirely arbitrary on the part of the company; rather it was made because of the company's established policy of serving only members of that corporation. The representative of the company states quite frankly that the company does

not wish any more subscribers than it presently serves.

This attitude or policy of the company was quite evidently taken, and is now adhered to, upon the theory that the company is not a public utility and is thus under no obligation to serve anyone except members of the corporation. It seems clear, however, that Meehan Telephone Company, under the law of this state, is a public utility. Such, in effect, was the decision of the supreme court of this state in the case of Commonwealth Teleph. Co. v. Carley, 192 Wis 464, PUR1927C 164, 213 NW 469.

In the case just cited, a number of so-called "roadside" or "switched" telephone companies, which were similar to Meehan Telephone Company, in that they were mutual companies and were organized and designed to serve only their own members, were held to be public utilities and subject, as such, to the regulatory authority of the Railroad Commission. It does not appear from the record in the Carley Case, *supra,* that the facilities of the "switched" companies, there involved, were available for furnishing any long-distance service. The record in this case shows that the facilities of the respondent are available for such long-distance service; so that, practically speaking, any telephone user in this state—to say nothing of such users throughout this country and Canada—may communicate by means of those facilities with any subscriber of Meeham Telephone Company and vice versa. We think that this fact is sufficient to make the doctrine of Schumacher v. Railroad Commission, 185 Wis 303, PUR 1925C 228, 201 NW 241, inapplicable to the question of the public utility *status* of the respondent in this case; and that it must be concluded that respondent has such status.

To hold otherwise would mean that practically every mutual "roadside" telephone company in this state is not a public utility, and that the rates and service of such companies are not subject to regulation, in spite of the fact that the entire telephone-using public of the state is more or less dependent upon the service of such companies for telephone communication. Ever since the decision in the Carley Case, *supra,* above cited, such mutual companies have, without exception, complied with the requirements of the public utility law by filing annual reports, have uniformly filed their rates with the Commission, and have not attempted to change their rates otherwise than by the approval or authority of the Commission. We think that this practice constitutes such a general recognition of the public utility *status* of all such companies that there can now be no question as to that *status;* and that the respondent must therefore be considered as a public utility of this state and subject to the duties and obligations of service which the law attaches to all public utilities.

We conclude, therefore, that Meehan Telephone Company is a public utility of this state engaged in furnishing telephone utility service to the public in the town of Plover, Portage county.

[3–6] Being a public utility, Meehan Telephone Company has an obligation to furnish service to any member of the public who is within

the undertaking of service made by that company. We do not see how it can be said that service to Mr. Needham is not within that undertaking. Lines of the Meehan Telephone Company are on the highway adjacent to the residence occupied by Mr. Needham. While Meehan Telephone Company obviously has not undertaken service to the entire public of the state, or even of the town of Plover, we do not see how it could have an undertaking which would exclude the service to a member of the public who resides adjacent to the telephone lines of the utility.

The evidence indicates that the Meehan Telephone Company may have forfeited its charter by reason of its failure to file reports with the Secretary of State, as required by law. We do not see how this fact, if it be a fact, can operate to change or alter the obligation of the company with respect to furnishing service to Mr. Needham. The records show that the Meehan Telephone Company has been operating as a de facto corporation for several years, immediately last past, and has reported to the state treasurer as such. Presumably, if the corporation is out of existence, the property which belonged to it when it was in existence now belongs to the persons who were members of the corporation when its charter was forfeited; and such persons are the public utility here involved and may be regarded as a voluntary association operating as a telephone utility under the name of Meehan Telephone Company. We therefore conclude that Meehan Telephone Company, either as a corporation existing under the laws of this state, or otherwise, as an association of the former members of that corporation, owes a duty to furnish its telephone service to any member of the public within its undertaking when demand for that service has been made. Mr. Needham is a member of the public within that undertaking, and has made such demand, and is therefore entitled to receive the service which he has thus demanded. We do not consider that the furnishing of such service would be an extension requiring prior notice from the respondent to the Commission or to other telephone utilities operating in the town of Plover.

[7–9] There remains, however, the question of the rates, terms, and conditions under which service to Mr. Needham by Meehan Telephone Company should be furnished. He is not a member of the corporation or association known as the Meehan Telephone Company, although he has clearly indicated his willingness to become such a member if that is possible. Obviously, if the corporation has forfeited its charter, it cannot dispose of any unissued stock in that corporation to Mr. Needham; and the evidence indicates that Mr. Needham has been unable to find anyone who is the owner of a share of stock in the corporation and is willing to dispose of it to him. However, the company cannot lawfully or reasonably deny service to Mr. Needham upon the ground that he is not a member or stockholder.

An examination of the rates filed and charged by the Meehan Telephone Company indicates that it has attempted to operate virtually on a nonprofit basis. Mr. Needham, as a subscriber,

is entitled to receive service at the utility's present lawfully filed rates. If, as a result of serving nonstockholders, the utility wishes to revise its rates, it may do so by securing proper authorization from the Commission.

As far as the terms and conditions under which such service should be given are concerned, it appears that Mr. Needham is able and willing to provide the necessary wire and the poles or other supports necessary to connect the wires of the company from the highway with a station or instrument in his residence. Since Mr. Needham is willing to do this, we see no reason why the company should not be required to furnish service to him upon condition of his furnishing such connection between his residence and the company's existing lines.

The Commission finds:

1. That Meehan Telephone Company is a public utility of this state engaged in furnishing telephone utility service to the public within an area in the town of Plover, Portage county, which includes the residence of James E. Needham.

2. That said James E. Needham has requested that the utility service of said Meehan Telephone Company be furnished to him upon the terms and conditions as specified and prescribed in the order herein and at the regular filed rates of said utility.

3. That said Meehan Telephone Company has refused to furnish the service as thus requested.

INDIANA SUPREME COURT

Chicago & Eastern Illinois Railroad Company

v.

Public Service Commission et al.

[No. 27861.]

(— Ind —, 49 NE(2d) 341.)

Railroads, § 10 — Jurisdiction of Commission — Caboose cars for train crews.

The Commission does not have jurisdiction to require railroads to furnish caboose cars for train crews.

[June 22, 1943.]

APPEAL *from judgment for defendant in action to enjoin enforcement of Commission order requiring railroad to furnish caboose car for train crew; reversed with instructions.*

APPEARANCES: Rawley & Stewart, of Brazil, and Hays & Hays, of Sullivan, for appellant; Nathan Levy and Joseph A. Roper, both of South Bend, for appellees.

FANSLER, J.: On petition of the Brotherhood of Railroad Trainmen, the Public Service Commission of Indiana entered an order requiring the appellant to furnish a caboose car for its train crews engaged in certain switching operations in the city of Evansville. The appellant began this action in the court below seeking to enjoin the enforcement of the order.

It was contended by the appellant before the Public Service Commission and the court below, and it is contended here, that the Public Service Commission exceeded its jurisdiction in making the order.

The Public Service Commission derives its power and authority solely from the statute, and unless a grant of power and authority can be found in the statute it must be concluded that there is none.

The petition filed before the Public Service Commission recites that it is filed under § 55–130, Burns' 1933, § 14469, Baldwin's 1934, being § 1 of Chap. 58 of the Acts of 1933, page 421. That section was originally enacted as part of the Railroad Commission Law of 1905. Acts 1905, Chap. 53, § 23, pages 83, 101. It was last amended in 1933. Subdivision (a) requires that every railroad shall report accidents, involving loss of life or serious injury to passenger or employee, to the Commission, and that the Commission shall investigate and report its conclusions and recommendations to the railroad, and recommend steps to be taken to prevent like accidents; that unless the railroad shall carry out the recommendations within a reasonable time, the Commission shall make the recommendations public. There is no authority to require the railroad to comply or to adopt safety measures. Subdivision (b), which seems to be the one relied upon, provides that whenever the Commission shall receive information "that any carrier in this state does not keep its road or equipment in proper condition and repair for the health and safety of its employees or the public," or that it does not maintain suitable passenger depot buildings and equipment, that it does not keep suitable freight depots, switches, and sidetracks for handling freight, that it does not run, operate, or schedule its passenger trains so as to make reasonable and proper connections, or that there is a dangerous defect in connection with the operation of the railroad, or any railroad bridge, culvert, curve, embankment, water tank, crane, frog, railroad or wagon crossing, ties or tracks, motive power, stations, rolling stock, machinery, roadbed, or ground, or fault in the construction, equipment, or management of any railroad, it shall be the duty of the Commission to require an investigation to be made, the result of which shall be reported to the management of the company, and changes and improvements, additions, buildings, and accommodations shall be recommended, and a reasonable time fixed in which such improvements or changes or additions shall be made; that if they are not made, proceedings by mandamus or other rem-

edy may be brought in court to force compliance with the order. Subsections (c) and (d) deal with the intersection of two railroads and grade crossings and grade separations.

There is nothing in the provisions above described authorizing or empowering the Commission to order or require anything to be done. Its highest authority is to begin an action in court to require compliance with recommendations and suggestions.

There are numerous statutes, penal and otherwise, requiring the use and installation of specific equipment designed for the protection of employees and the public. There are specific statutes (§ 55–1233 et seq., Burns' 1933, § 14534 et seq., Baldwin's 1934) requiring that caboose cars used by railroads shall conform to certain requirements, and authorizing the Commission upon investigation to grant to carriers the right to construct and use cars of other specifications where it is impossible to comply with the statute. But in none of these statutes enacted by the legislature itself is there found a requirement that the carrier shall use a caboose car on any train, and, since authority in respect to caboose cars granted to the Commission is limited to making exceptions, it must be concluded that there was no intention to grant other and greater authority upon the subject than the legislature itself had seen fit to exercise.

Brotherhood of Railroad Trainmen v. Terminal R. Asso. of St. Louis (1942) 379 Ill 403, 41 NE(2d) 481, cited by the appellees, deals with the authority of the Illinois Commission under a statute which specifically vests the Commission with power to require the installation, use, and maintenance of safety devices and uniform or standard equipment. There is no comparable provision in our statute, and hence the case is of no assistance in determining whether the Indiana Commission has such authority under the Indiana statute.

It must be concluded that the Publice Service Commission had no jurisdiction to make the order.

Judgment reversed, with instructions to enter judgment accordingly.

Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

3,000-*KVA* Mobile Unit Substation

In order to prevent trouble or maintenance in permanent substations from causing long service outages, General Electric, in coöperation with the engineers of the Consolidated Gas, Electric Light & Power Company of Baltimore, has built a complete 3,000-kva mobile unit substation, which is ready on a moment's notice to be moved to any part of the system where emergency power is required.

This equipment is one of the largest ever built for highway use, having a capacity sufficient to supply enough power to operate thirty thousand 100-watt lamps, or supply a small town. The complete substation includes the power transformer, high-voltage fuses and disconnecting switches, feeder oil circuit breaker, lightning arresters for both high- and low-voltage circuits, and load-ratio-control equipment to regulate the low voltage under load. Weighing 20 tons, the substation is compactly mounted on a semitrailer, the front end of which is supported by the towing tractor during transportation.

This equipment can be used to transform power circuits of 33,000 or 13,200 volts on the high-voltage side, and circuits of 2,450, 4,400, 7,620 or 13,200 volts on the low-voltage side. It can be used on any of approximately 60 permanent substations on the customer's system, to increase their power output or as a substitute if emergency conditions shut down one of the regular substations.

Combination Mercury and Incandescent Lamp Dome Reflector

A unit designed to fulfill the need for illumination approaching daylight on both flat and vertical surfaces has been placed on the market by the manufacturer, Revere Electric Mfg. Co., Chicago, Ill. An incandescent lamp is used in combination with a mercury lamp to accomplish the purpose.

The reflector is shaped to give wide even distribution of light with a minimum of direct glare and together with the hood, embodies features which dissipate heat accumulated from the lamps.

Further information will be supplied by writing the manufacturer, Revere Electric Mfg. Co., 2949 N. Paulina Street, Chicago, Ill.

High Speed Drill Chuck

R. M. Wright Company offers a new high speed drill chuck, called the Wright Centrif-O-Matic which permits the operator to change drills, from drill to countersink, and other tools rapidly, while the motor is running. Besides a notable saving in production time, the method is said also to contribute to increased tool life and production, while lowering power tool inventory and maintenance cost.

Drill adapters for the Wright Centrif-O-Matic are available to accommodate drill sizes from 1/16 in. to 9/32 in., letter drills from A to K, and wire drills from 1 to 60.

Further information may be obtained from the manufacturer, Washington Square Bldg., Royal Oak, Michigan.

Catalogs and Bulletins

Street Car Carbon Shoe Operation Booklet Topic

"Modern Current Collection for Street Cars" is the title of a new 16-page illustrated booklet just published by Ohio Brass Company of Mansfield, Ohio. The publication discusses the principles and advantages of the use of a renewable carbon insert shoe for street car current collection from the overhead wire and describes the changes necessary to adapt the overhead wire system for carbon shoe operation. As a supplement to Ohio Brass transit catalog No. 23, the booklet also lists and illustrates the company's overhead line material and current collection equipment for carbon shoe operation.

Blaw-Knox Bulletin Issued

Blaw-Knox Company of Pittsburgh, Pennsylvania, announces the publication of Bulletin No. 1929, "'Fine Separation' with Tracyfiers"—for steam lines, boilers, gas lines, chemical processes, gas cleaners and evaporators.

The booklet contains a diagramatically illustrated basic construction form which enables utilization of the fundamental principles governing attainment of "fine separation." The principles of operation are briefly indicated too.

The publication also contains illustrations of Blaw-Knox Pipe Line Tracyfiers, designed to

"assure freedom from slugs of liquid plus the continuous delivery of clean dry steam, air, gas, or vapor"; Blaw-Knox Drum Type Tracyfiers, "engineered to assure continuous delivery of standard specification steam"; and the Blaw-Knox "O-F" Type Tracyfier, which will "most economically meet the need for fine separation in connection with evaporators, absorption, or contactor towers, and in small diameter vertically disposed line separators."

Manufacturers' Notes

Westinghouse Forms "Better Homes" Department

Irving W. Clark, associated since 1934 with the kitchen and housing activities at the Westinghouse Electric Appliance Division in Mansfield, Ohio, was appointed manager of the newly created "Better Homes" department. His headquarters are in Pittsburgh. The immediate function of the new department, according

Manufacturers' Notes (Cont'd)

to B. W. Clark, vice president in charge of sales, will be to coördinate the company's activities in helping to house war workers, though its ultimate objective is to develop postwar housing markets for the contributions which electricity is making toward better living.

In line with these functions, the "Better Homes" department will provide a centralized advisory and consultation service for architects, engineers, builders, prefabricators, and home owners. This is an extension of a home planning service inaugurated by Westinghouse nine years ago.

Synthetic Rubber Plant Producing Rubber

The world's largest synthetic rubber plant, with capacity for producing 120,000 tons of man-made rubber annually and built at Port Neches, Texas, by The B. F. Goodrich Company is now producing rubber, it is announced by the Akron company.

The giant plant, capable of turning out a fifth of the nation's normal rubber requirements, is the largest to be constructed in the government's synthetic rubber program. B. F. Goodrich will operate two of the 30,000 tons units.

Francis P. Smith, Jr., New Kotal Sales Manager

The Kotal Company of New York recently announced the appointment of Francis P. Smith, Jr., as sales manager.

Mr. Smith was originally associated with his father's firm, Dow and Smith. He later served the Texas Company and then the Union Oil Company of California, becoming manager of the asphalt department, their extensive interests taking him to many foreign fields.

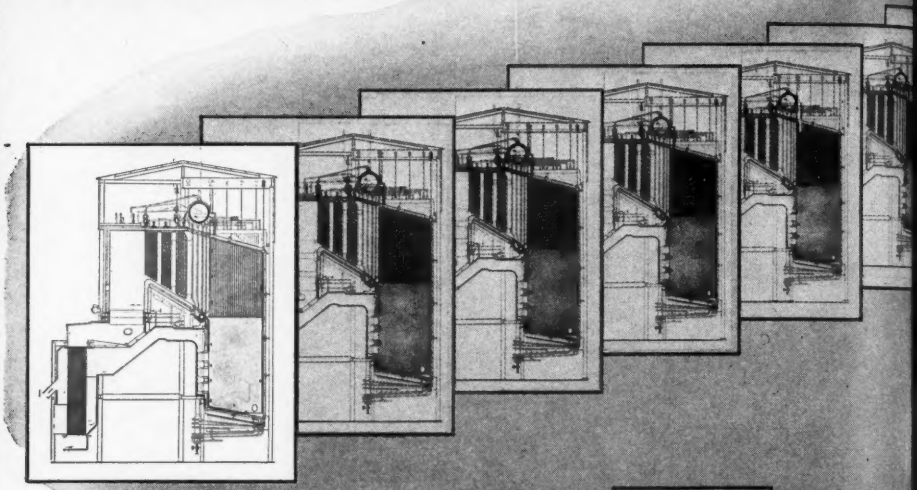
Mr. Smith organized his own contracting firm, Smith and Day of Los Angeles, which engaged actively in West Coast paving construction until the wartime restriction of asphaltic materials.

As a senior business specialist to the Office of Price Administration and the Petroleum Administration for War, Mr. Smith compiled the Maximum Price Regulation No. 323, working in close harmony with the asphalt industry.

Tasker Elected Director of Research of ASHVE

Cyril Tasker, a member for the past thirteen years of the Ontario Research Foundation, has been selected as director of research of the American Society of Heating and Ventilating Engineers, 51 Madison Ave., New York city.

STANDARDIZAT



Another compa
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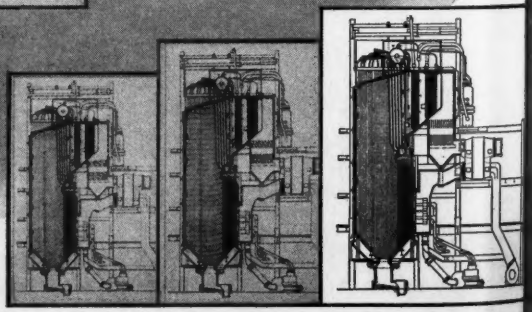
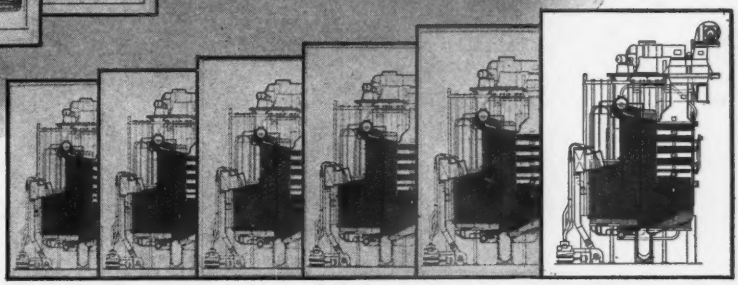


Another company has two B&W Radiant Boilers in one station and one in another station. Capacity each boiler, 550,000 lb. steam per hour. Pulverized-coal fired.

G-355 F

ATION

Twelve B&W Radiant Boilers of the same design are in service in three stations of the same company — six in one station, three in another, and three in the third. The boilers are multi-fuel fired and generate 200,000 lb. steam per hour each.



Another company has four B&W Open-Pass Boilers in one station and two in another station. Capacity each boiler, 450,000 lb. steam per hour. Pulverized-coal fired.

for Better Values

Standardization suggests today the duplication of many things, particularly the production to the same specifications of war-time equipment in astronomical quantities. The system is not new—only the scale is new, and amazing. An outstanding example is its application to the construction of the great fleets of naval and cargo ships and of the boilers for these ships—for the production of which B&W has been awarded the Army-Navy "E" and Maritime Commission "M".

Standardization is possible in the case of these marine boilers, because, although there are a number of designs of ships and boilers, ships of the same class are being built in large numbers, and generally, they have propulsion equipment of the same design, have similar boiler space, feedwater, and fuel conditions, and are suitable for boilers of the same size, design, and steam characteristics.

In the stationary field, where the number of boiler units that can be built in multiples is smaller in most cases, where space conditions differ in different plants, and where steam capacity and characteristics, feedwater, and fuels are all factors of varying relationship to each other, it is understandable why no single design of power boiler has to date been adopted as a standard. However, as indicated by the illustrations, certain designs of complete B&W Boiler Units have been installed on an exact multiplication basis. By this means, engineering costs were reduced, fabrication and installation time shortened, and other equally obvious advantages obtained.

Such standardization does not necessarily result in freezing of designs, or details of designs. Progress in the art, resulting from continuing experience in operation and in the development of materials and manufacturing processes, will assure the continued application of equipment that meets fundamental engineering problems arising from changing economic conditions and operating requirements. To this end, B&W will, as it has in the past, continue its research and development, in order to create new standards that will result in better values to purchasers of its equipment.

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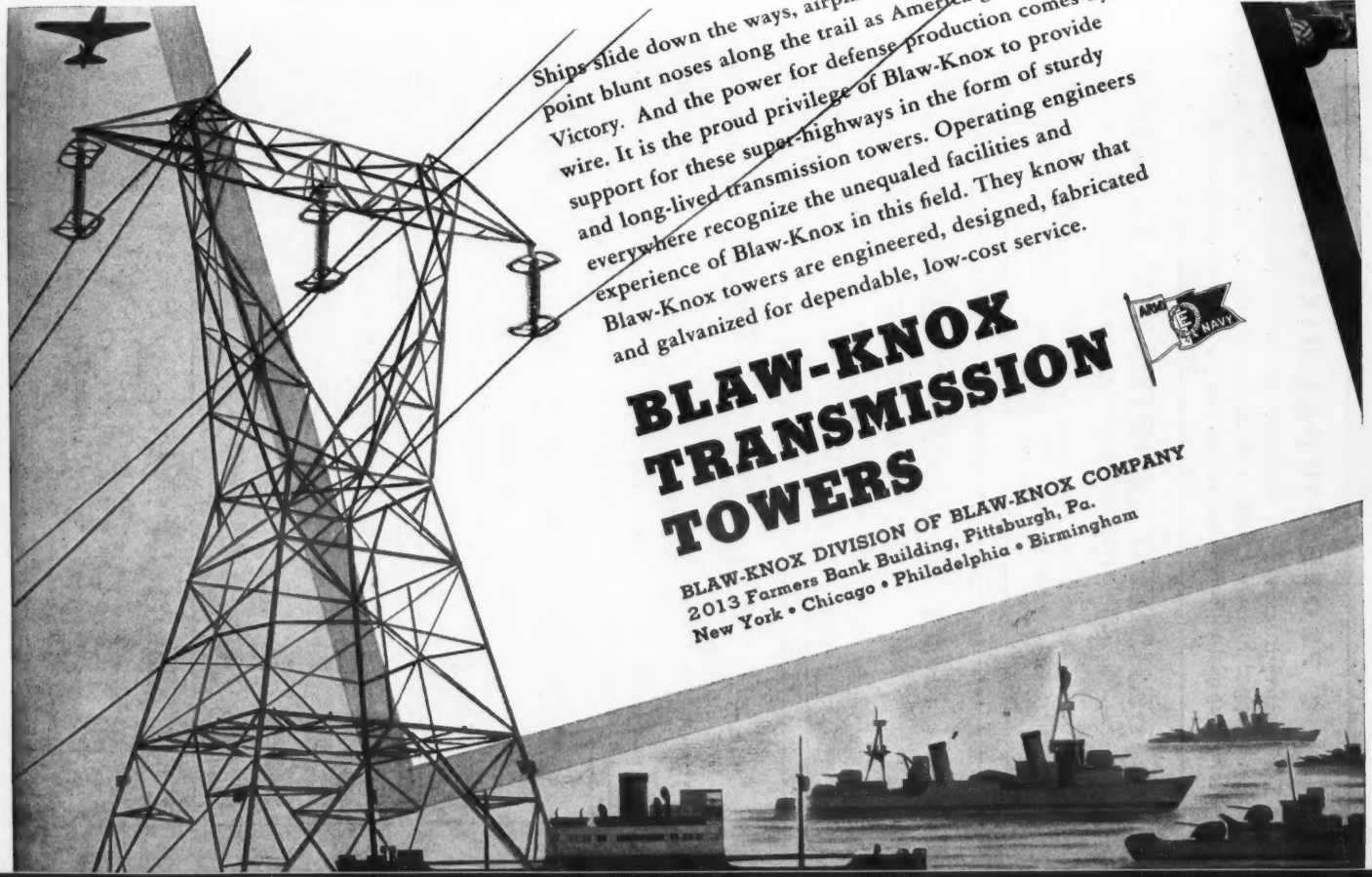
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(*Professional Directory Concluded on Next Page*)

PROFESSIONAL DIRECTORY *(concluded)*

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PUBLIC UTILITIES REPORTS, INC.,
A. S. Hills, Business Manager

Sworn to and subscribed before me this 20th day of September, 1943.

Elsie P. Dameron,
Notary Public.

(My commission expires October 15, 1943.)

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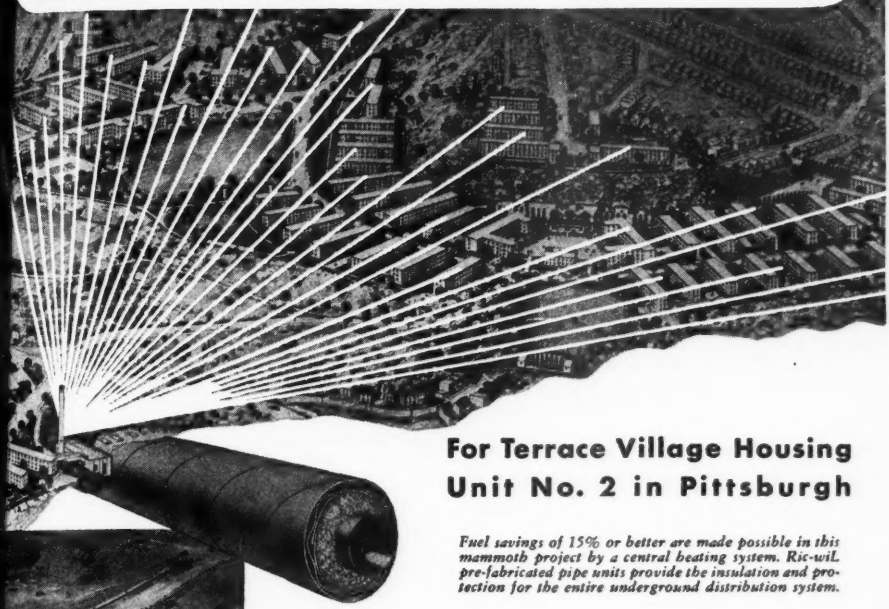

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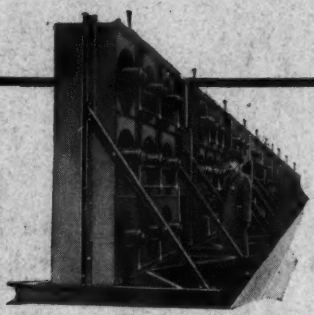
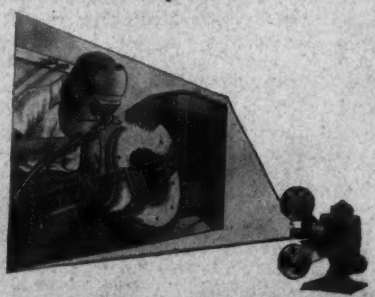


TO HELP TRAIN WELDING OPERATORS in the art of atomic-hydrogen arc welding, widely used in the fabrication of light-gage metals and special alloys, General Electric has just produced another new training film, "The Inside of Atomic-hydrogen Arc Welding." Made in full color and sound, it consists of two parts, each ten minutes long. This film can be purchased at print cost, $52.00 per part; or it can be borrowed for single showings, without charge except for transportation.

FASTER INSTALLATION, eas servicing, and short-circuit pr tection adequate for th heaviest industrial power sy tems are important advantag of General Electric's new 230 volt metal-enclosed motor co trol. This control includes a oil-immersed contactor f severe, repetitive starting dut also EJ-2 current-limiti fuses. The fuses serve as di connecting switches to isola the starter from the line f safety during inspection f servicing.

EFFICIENT DISSIPATION OF HEAT is an important factor in round-the-clock refining of aluminum at a new war plant. Some 34 million btu per hour must be removed from the mercury-arc rectifiers which supply direct current to the pots. For this cooling job, G.E. has supplied nearly 100 water-to-air heat-transfer units of a new type which save greatly on critical materials. By using nine small-size fans on each unit instead of a single big fan, duct work is obviated, control is made more flexible, and shutdowns affecting an entire unit are avoided.



FOR ELECTRICAL ENGINEERS ser ing industry, these new electric ideas serve a double purpose. First, by direct application, the may help to save energy, ma power, or critical materials. Second, they may bring to s problems which might be solved b similar electrical pioneering. If yo know of such a problem, why no ask G.E. for assistance? Engineering aid is available on any job that ca help win the war. *General Electric Company, Schenectady, New Yo*

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